

COMMUNITY WELFARE BILL, 1981

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:—

- Adoption of Children (Community Welfare) Amendment Bill, 1981;
- Bail (Community Welfare) Amendment Bill, 1981;
- Community Service Orders (Community Welfare) Amendment Bill, 1981;
- Coroners (Community Welfare) Amendment Bill, 1981;
- Crimes (Community Welfare) Amendment Bill, 1981;
- Defamation (Community Welfare) Amendment Bill, 1981;
- Infants' Custody and Settlements (Community Welfare) Amendment Bill, 1981;
- Justices (Community Welfare) Amendment Bill, 1981;
- Land and Environment Court (Community Welfare) Amendment Bill, 1981;
- Maintenance (Community Welfare) Amendment Bill, 1981;
- Mental Health (Community Welfare) Amendment Bill, 1981;
- Miscellaneous Acts (Community Welfare) Repeal and Amendment Bill, 1981;
- Parole of Prisoners (Community Welfare) Amendment Bill, 1981;
- Public Instruction (Community Welfare) Amendment Bill, 1981;
- Statutory and Other Offices Remuneration (Children's Panel Council) Amendment Bill, 1981.

The object of this Bill is to make legislative provision for providing welfare services to the community, for dealing with criminal proceedings involving children, for the constitution of the Children's Court of New South Wales and for the detention of children and other persons who have been placed, under the provisions contained in the Bill, in training centres or are on remand.

The Bill contains the following provisions:—

PART I.

PRELIMINARY.

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement.

PART II.

GENERAL.

Clause 4. Interpretation.

Clause 5 sets out the general objects of the proposed Act.

Clause 6 provides for the appointment of visitors to facilities established under the proposed Act.

Clause 7 requires the preparation and submission to Parliament of annual reports prepared by the Director of the Department of Youth and Community Services (the "Director") with respect to the operation of the proposed Act and by advisory committees and advisory councils established under the Principal Act with respect to their work and activities.

Clause 8 requires the preparation of an annual report on the activities of persons who hold licences under the proposed Act.

Clause 9 empowers the Minister to establish and maintain such facilities as he considers necessary for the purposes of the proposed Act and enables those facilities to be established and maintained on premises which belong to or are under the control of the Crown or on other premises if the person to whom the other premises belong or who has control of them consents to the premises being used for the purposes of a facility.

Clause 10 empowers the Minister and the Director to delegate functions under the proposed Act to an officer of the Department of Youth and Community Services (the "Department"), to delegate prescribed functions to other persons and to delegate to persons in whose custody a ward has been placed certain specified functions.

PART III.

COMMUNITY WELFARE AND SOCIAL DEVELOPMENT.

DIVISION 1.—*Functions of Minister and Director.*

Clause 11 specifies the functions of the Minister with respect to community welfare and social development.

Clause 12 enables the Minister to establish and maintain assistance funds to support programmes of community welfare and social development which are to be carried out otherwise than by the Minister, those funds consisting of money provided by Parliament and of money allocated from the Community Welfare Fund to be established under proposed section 17.

Clause 13 provides for the appointment and training of honorary welfare officers to carry out prescribed duties.

Clause 14 requires the Director, when directed to do so by the Minister, to prepare policy statements with respect to community welfare and social development and programmes for the implementation of those policies and where the Minister so approves to invite public participation and comment on those statements.

Clause 15 requires the Director, when directed to do so by the Minister, to examine and evaluate programmes of community welfare or social development which are or are to be financed, wholly or in part, from public moneys and to report to the Minister the result of his examination or evaluation.

Clause 16 empowers the Minister and, subject to the approval of the Minister, the Director to enter into arrangements to use the services of any person or organisation for the purposes of the proposed Act.

Clause 17 provides for the establishment of a Community Welfare Fund consisting of money paid by any person to the Director for the provision of community welfare services.

Clause 18 provides for the application of the Community Welfare Fund, referred to in proposed section 17, for the purpose of providing community welfare services.

DIVISION 2.—*Advisory Councils and Committees.*

Clause 19 provides for the constitution of a Community Welfare Advisory Council whose functions will be to advise the Minister on matters relating to community welfare and social development referred to it by the Minister, to furnish reports on those matters to the Minister and to conduct public inquiries and seminars with respect to those matters.

Clause 20 provides for the constitution of the New South Wales Advisory Council on the Handicapped whose functions will be to furnish advice and information to the Minister and Department heads on matters relating to handicapped persons.

Clause 21 empowers the Minister to establish such regional, local, special or other advisory committees as he thinks fit.

Clause 22 enables the Minister to provide out of money provided by Parliament assistance and support for the functioning of the Community Welfare Advisory Council and the New South Wales Advisory Council on the Handicapped and any advisory committee established under proposed section 21 (1).

DIVISION 3.—*Community Services Training Council.*

Clause 23 provides for the establishment of a Community Services Training Council whose functions will be to make reports and recommendations to the Minister with respect to the instruction and training of persons employed or to be employed in the provision of community welfare services.

Clause 24 empowers the Minister to provide and grant accreditation of courses of instruction and training for community welfare services.

PART IV.

GENERAL WELFARE ASSISTANCE.

Clause 25 specifies the object of Part IV.

Clause 26 empowers the Minister to provide assistance in various forms to persons in need or distress, either directly or indirectly through non-Government organisations.

Clause 27 empowers the Minister to grant licences to persons in charge of non-Government children's homes for the maintenance of children, other than wards, resident in those homes.

PART V.

HOME CARE SERVICES OF NEW SOUTH WALES.

Clauses 28-37 provide for the incorporation of the present Home Help Service of New South Wales as the Home Care Service of New South Wales, and contain incidental provisions with respect to the functioning of the new corporation.

PART VI.

DISASTER WELFARE SERVICES.

Clause 38 contains definitions for the purposes of Part VI.

Clause 39 empowers the Director, in accordance with the Minister's directions, to take steps for co-ordination of the provision of community welfare services to disaster victims provided that the Director does so in a manner not inconsistent with any of the provisions of the State Emergency Services and Civil Defence Act, 1972.

Clause 40 provides for the establishment of a Community Disaster Relief Fund consisting of money paid by any person for the relief of disaster victims or transferred to the Director under proposed section 42.

Clause 41 provides for the application of the Community Disaster Relief Fund for the relief of disaster victims.

Clause 42 provides for the transfer of moneys from a private disaster relief fund to the Community Disaster Relief Fund.

Clause 43 provides for the investment of the Community Disaster Relief Fund.

PART VII.

CHILDREN'S WELFARE.

DIVISION 1.—*General.*

Clause 44 contains definitions for the purposes of Part VII.

Clause 45 specifies the objects of Part VII.

Clause 46 empowers the Minister to make a temporary custody order in respect of a child under the age of 16 years on the application of a person who has the care of the child, in respect of a child of or above the age of 16 years on the application of the child himself or in respect of a child subject to control under proposed Part X.

Clause 47 prohibits unauthorised foster placements (i.e., the placement of a child with a person who does not hold a fostering authority and is not related to the child when the placement is made) otherwise than by an authorised private fostering agency or by or with the written approval of the Director.

Clause 48 requires the Director to maintain a register of all children in alternative care for a continuous period of 14 days or more.

Clause 49 details the procedures which are to be followed when a child who has been placed in a facility pursuant to any provision of the proposed Act or a child who resides in licensed premises is to undergo a "special medical examination", i.e. a vaginal or anal examination or any interior examination of the penis.

Clause 50 provides for consents to medical and dental treatment (excluding special medical examinations referred to in clause 49) of children who are not in the care of their parents or guardians within the meaning of section 49 (1) of the Minors (Property and Contracts) Act, 1970.

Clause 51 prohibits the tattooing of a child without the prior written permission of the child's parent.

Clause 52 prohibits the person in charge of a lying-in home from permitting a child to be taken from the home otherwise than in the charge of the child's mother without first having obtained the written consent of the Director.

Clause 53 provides that, except by the authority of a court order and in certain other cases, a person shall not act as a foster parent of a child in consideration of a lump sum payment.

Clause 54 prohibits a person from leaving a child in his care in a motor vehicle without proper supervision.

Clause 55 provides for compulsory attendance at school of all children who have attained the age of 6 years and who have not attained the age of 15 years.

Clause 56 empowers the Minister to grant a certificate exempting a child from attendance at school in such circumstances as he thinks fit.

Clause 57 requires the proprietor or principal teacher of a certified school or a certified special school to keep a register of attendance of children at the school and to make it available for inspection and, if required to do so by the Minister, to furnish a return relating to the absence of children from the school or information concerning the attendance of children.

Clause 58 provides that a certificate with respect to the attendance of a child at a State school or special school purporting to be under the hand of the principal teacher or other specified person is prima facie evidence of the matters stated in it.

Clause 59 empowers the Minister to exempt persons, absolutely or subject to conditions, from the provisions of the proposed Act which require certain services, premises or persons to be licensed.

Clause 60 makes it an offence for a person to make a statement or to furnish information that he knows to be false or misleading in a material particular in an application for a licence or authority or in connection with an inquiry made in relation to such an application.

DIVISION 2.—*Licensed Child Care Services and Licensed Residential Child Care Centres.*

Clause 61 provides that a person who provides or advertises himself as being willing to provide a child care service, as defined in proposed section 44 (1), is guilty of an offence unless he is licensed, provides that the licensee is guilty of an offence

if the person who has the overall supervision of the child care service is not the authorised supervisor, as so defined, under the licence and further provides that the person having the overall supervision of the child care service is guilty of an offence unless he is the authorised supervisor, as so defined, under the licence.

Clause 62 provides that a person who conducts or advertises himself as being willing to conduct a residential child care centre, as defined in proposed section 44 (1), is guilty of an offence unless the premises are licensed and he is the licensed manager of the licensed premises.

Clause 63 provides that the proprietor of premises on which a residential child care centre is conducted is guilty of an offence if the premises are not licensed, if the premises do not comply with any condition of the licence or if the proprietor fails to comply with any condition of the licence which is applicable to him.

Clause 64 specifies the particulars that licences for child care services and for residential child care centres are required to contain.

Clause 65 provides that a child who resides at an unlicensed residential child care centre and is not removed upon request shall be deemed to be a child in need of care, within the meaning of Division 6 of Part VII.

Clause 66 provides that if an unlicensed child care service is being provided in respect of a child, a person responsible for the child is guilty of an offence if he fails, on the request of an officer, to cause the child to be no longer provided with the service.

Clause 67 requires the licensed manager of licensed premises to notify the Director and a member of the police force of the death of any child at those premises.

DIVISION 3.—*Private Fostering Agencies.*

Clause 68 creates the following offences in relation to the fostering of children:—

- (a) the offence of carrying on private fostering services while unauthorised;
- (b) the offence (committed by an authorised private fostering agency) of entrusting the overall supervision of its fostering services to a person other than its principal officer;
- (c) the offence of supervising private fostering services conducted by an authorised agency without being the agency's principal officer; and
- (d) the offence of failing to comply with any condition of a fostering agency authority.

Clause 69 provides that a fostering agency authority may be granted only to a non-Government organisation and requires that it shall specify certain matters.

DIVISION 4.—*Authorised Foster Parents.*

Clause 70 prohibits the fostering of a child except by holders of fostering authorities unless the child was placed in care by either an authorised private fostering agency or by or with the written approval of the Director.

Clause 71 specifies the particulars which a fostering authority shall contain.

DIVISION 5.—*Employment of Children.*

Clause 72 provides that, subject to certain exemptions, a child who takes part in an entertainment or exhibition or offers anything for sale (otherwise than as a street trader) must be licensed and creates certain offences which are committed when such a child is not licensed, with an increased penalty of \$2,000 or imprisonment for 2 years or both if the child takes part in an entertainment or exhibition for pornographic purposes.

Clause 73 prohibits street trading by children under 14 years of age.

Clause 74 prohibits the employment of a child for the purpose of begging or of inducing the giving of alms.

Clause 75 makes it an offence for a person to cause or allow a child to be exposed to the danger of death or injury in the course of a public entertainment or exhibition or of training or rehearsing for such an entertainment or exhibition and provides that where, in the course of such an entertainment or exhibition, a child is harmed, the child's employer is guilty of an offence and that, if he is not the parent of the child, he may be ordered by the court before which he is convicted to pay compensation, not exceeding the prescribed amount, for the injury to the child.

Clause 76 empowers the Minister to grant a licence authorising a child to be employed for the purpose of taking part in an entertainment or exhibition or offering anything for sale.

DIVISION 6.—*Children in Need of Care.*

Clause 77 specifies the objects of Division 6 of Part VII.

Clause 78 provides that the Children's Court, when exercising its functions under Division 6 of Part VII, must sit with an assessor.

Clause 79 authorises the Minister to establish a panel of appropriately qualified assessors, to sit as members of the Children's Court for the purposes of Division 6 of Part VII.

Clause 80 requires the Children's Court to inquire into an application that a child be dealt with as a child in need of care and provides that, if the Court finds that the child is in need of care, it may make any of the following orders:—

- (a) release the child upon the giving of undertakings;
- (b) place the child in the custody of a suitable person;
- (c) place the child under the supervision of a Departmental officer;
- (d) declare the child to be a ward of the Minister and, in the case of a child who is seriously emotionally disturbed, make, in addition, an order placing him in a special facility for a maximum period of 12 months;
- (e) in the case of a child under the age of 15 years who has not been attending school regularly, require the child to reside at and attend a special school for a maximum period of 12 months; or
- (f) declare the child to be an intellectually handicapped person under the guardianship of the Minister.

The clause also provides that, where a child is placed in the custody of the person in charge of an authorised private fostering agency, that person may in turn place the child in the care of the holder of a fostering authority.

Clause 81 provides that an order referred to in clause 80 shall not be made in respect of a child who has attained the age of 16 years unless it is appropriate, by reason of the child's intellectual handicap, that he be dealt with as a child who has not attained that age, and imposes other limitations and requirements with respect to the making of such an order.

Clause 82 provides that an application to the Children's Court that a child be declared to be a child in need of care may be made only by a Departmental officer or, in circumstances where the appropriate Departmental officer cannot be notified, by a member of the police force.

Clause 83 provides that, where a child is, pursuant to an order referred to in clause 80, committed to the custody of a responsible person by the Children's Court or is placed under the supervision of a Departmental officer, he and the premises in which he resides shall be subject to inspection by Departmental officers.

Clause 84 empowers the Children's Court to treat a child who has been residing in a non-Government children's home for a period of 12 months or more and who, in that period, has had no substantial contact with his parents as a child in need of care.

Clause 85 empowers the Children's Court before which an application to declare a child to be in need of care is pending to order the removal of the child the subject of the proceedings from any premises and provides for the enforcement of such an order.

Clause 86 authorises the issue by a stipendiary magistrate, upon his being satisfied by the oath of a Departmental officer or member of the police force that there is reasonable cause to suspect that a child is in need of care, of a warrant to search for and remove a child and place him in the care of the Director.

Clause 87 empowers the Children's Court to require the attendance of the child in respect of whom proceedings under Division 6 of Part VII are pending and of any person responsible for the child.

Clause 88 empowers the Children's Court to require the attendance of a child who has previously been found to be in need of care if undertakings which were given on the release of the child have not been complied with, the child has been placed in the care of an unauthorised person or a lawful direction has not been obeyed or if pending proceedings in respect of the child have been adjourned.

Clause 89 applies provisions of the Justices Act, 1902, so as to enable the Children's Court to issue summonses and warrants to compel the attendance before it of witnesses and other persons.

Clause 90 requires that a child who is removed from premises because it appears that he is in need of care or who is apprehended pursuant to a warrant as a child who appears to be in need of care be placed in the care of the Director.

Clause 91 specifies the orders that may be made by the Children's Court upon the adjournment of care proceedings. The court is enjoined to make whichever order least interferes with the child's existing situation, provided his adequate protection is ensured. The clause also provides that any child who is apprehended pursuant to a warrant because it appears that he is a child in need of care must be referred as soon as practicable by the Director to the Children's Court, unless the Director releases the child either with or without undertakings.

Clause 92 requires the Children's Court and the Director in the exercise of certain of their functions under Division 6 of Part VII to have regard to the wishes of the child, to any intention expressed by the child to refuse to return to the person who is accustomed to have his care and to whether the exercise of the function would adequately protect the child and other persons.

Clause 93 requires the Children's Court and the Director to record their reasons for not releasing a child during the adjournment of care proceedings and to cause a copy of the record of their reasons to be served on the persons responsible for the child. The Director is also required to serve on the child and on the persons responsible for the child a document containing brief particulars of the laws under which an application may be made for the discharge of the child.

Clause 94 specifies procedures to be followed in care proceedings and requires those proceedings to be conducted informally, requires facts tending to prove that a child is in need of care to be proved beyond reasonable doubt, provides that the court is not bound by the rules of evidence and empowers parties and any person with a genuine concern in the welfare of the child to examine and cross-examine witnesses.

Clause 95 provides that statements made by a child at a police station shall not be admissible in care proceedings unless there was present at the time the statement was made one of the persons specified in the clause or there was a proper and sufficient reason for the statement to have been given in the absence of one of those persons.

Clause 96 requires that an application for an order that a child be treated as a child in need of care be served on the child, if he has attained the age of 10 years, and on each person responsible for the child who can reasonably be located.

Clause 97 limits the duration of the period during which care proceedings may be adjourned by the Children's Court.

Clause 98 empowers a justice to adjourn care proceedings the hearing of which has not commenced, but subject to certain limitations.

Clause 99 permits the Children's Court to appoint a guardian ad litem for a child the subject of care proceedings.

Clause 100 specifies the powers of the Director in respect of a child who seeks refuge with him.

Clause 101 requires the Director, so far as is practicable, to accommodate in a place separate from alleged offenders children who are the subject of care proceedings.

Clause 102 requires a "prescribed person" (defined as a medical practitioner or person of another prescribed professional class), and authorises any other person, to notify the Director of his belief that a child has been abused or is in need of care.

Clause 103 provides for the compulsory medical examination of a child whom the Director or a member of the police force believes on reasonable grounds to have been abused and specifies the procedure to be followed.

Clause 104 empowers a stipendiary magistrate to issue a warrant authorising a Departmental officer or a member of the police force to search for and remove a child referred to in clause 103 who has not been presented for medical examination in compliance with the notice served under that clause.

Clause 105 empowers the Supreme Court to make an order releasing from the care of the Director a child subject to care proceedings, whether or not subject to the giving of undertakings in respect of the child.

Clause 106 provides that there is to be no limit on the number of applications that may be made for the discharge of a child from the care of the Director while care proceedings are pending.

DIVISION 7.—*Wards.*

Clause 107 provides that, in the administration of Division 7 of Part VII, the welfare and interests of wards of the Minister and of children who may be declared to be wards of the Minister are to be given paramount consideration.

Clause 108 empowers the Minister to declare a child to be a ward—

- (a) where the child has attained the age of 16 years—on the application of the child;
- (b) where the child is under the age of 16 years—on the application of a person responsible for the child or of any person who, in the opinion of the Minister, has a sufficient interest in his welfare; or
- (c) where a child ceases to be an intellectually handicapped person under guardianship under Part XI.

Clause 109 prescribes the procedures which the Minister is to follow before declaring a child to be a ward.

Clause 110 constitutes the Minister as the guardian of the person of wards and gives him custody of them.

Clause 111 describes the obligations and powers of the Minister in respect of wards.

Clause 112 entitles the Minister to provide assistance to persons who were but are no longer wards, including assistance in the form of continuing payments to secure education or vocational training on a full-time basis.

Clause 113 provides that the jurisdiction of the Supreme Court with respect to the custody or guardianship of children is unaffected by the provisions of the proposed Act relating to wards.

Clause 114 makes it an offence to remove a ward or cause a ward to be removed from his proper custody or to harbour, conceal or maintain a ward who has been removed from his proper custody.

Clause 115 permits any member of the police force and certain Departmental officers to return to the custody of the Minister any ward who has absconded or been illegally removed.

Clause 116 empowers the Minister to make arrangements concerning inter-State wards who enter New South Wales, to admit such an inter-State ward to wardship in New South Wales and to make reciprocal arrangements with the appropriate inter-State authorities.

DIVISION 8.—*Children's Boards of Review.*

Clause 117 contains definitions for the purposes of Division 8 of Part VII.

Clause 118 provides for the establishment of a Children's Review Panel from which Boards of Review may be constituted.

Clause 119 specifies the procedure for initiating the review of a ward or child and empowers a Board of Review, when carrying out a review, to review the welfare, status, progress and circumstances of a ward or child and to report thereon, with advice, to the Minister.

Clause 120 requires a Board of Review to give a copy of its report on a review to the person who applied for the review and enables it also to give a copy of the report to any person whom it considers to have a sufficient interest in the welfare of the ward or child under review.

PART VIII.

CRIMINAL PROCEEDINGS INVOLVING CHILDREN.

DIVISION 1.—*General.*

Clause 121 contains definitions for the purposes of Part VIII.

Clause 122 requires it to be conclusively presumed that no child under the age of 10 years can be guilty of an offence.

Clause 123 requires a court, in exercising criminal jurisdiction with respect to children, to have regard to specified principles.

Clause 124 requires a child who is accused of an offence and who is to be detained in custody to be detained in a remand centre unless he has attained the age of 16 years and the court in which proceedings are pending has certified that, by reason of his character or the nature of the charges against him, he ought not to be detained in a remand centre.

Clause 125 contains provisions controlling the extent to which publicity may be given to criminal proceedings to which a child is a party.

Clause 126 prohibits the publication of names of children or reports identifying children involved in criminal proceedings.

Clause 127 provides that a court may not make a control order or an order of probation in respect of a person under 21 years of age who was a child when he committed an offence or sentence such a person to imprisonment unless it has first obtained an assessment report with respect to the person.

Clause 128 provides that statements made by a child at a police station shall not be admissible in criminal proceedings unless there was present at the time the statement was made one of the persons specified in the clause or there was proper and sufficient reason for the statement to have been given in the absence of those persons.

DIVISION 2.—Proceedings in relation to Particular Offences.

Clause 129 provides that Division 2 of Part VIII extends, as well as to a child, to a person who has attained the age of 18 years but who is alleged to have committed an offence before he had attained that age.

Clause 130 provides for the establishment of the Children's Panel Council from which Children's Panels may be constituted.

Clause 131 provides that a court shall not proceed to hear a charge against a child (certain offences are excepted) unless a Children's Panel has determined that it may do so or the child has, upon legal advice, requested that the court do so. The excepted offences are—

- (a) homicide, an offence under the proposed section 61B of the Crimes Act, 1900, or the offence of attempting to commit an offence under that section;
- (b) offences punishable by death or penal servitude for life;
- (c) offences committed by persons subject to control;
- (d) contempt;
- (e) the offence of failing to comply with the requirement of a community service order;
- (f) traffic offences; and
- (g) offences which may be prescribed.

Clause 132 requires that a person who lays an information or makes a complaint against a child for a relevant offence shall file a report, for reference to a Children's Panel, that he has done so.

Clause 133 requires a Children's Panel to determine, within 28 days, whether a child should be dealt with for the offence with which he has been charged and specified in the report referred to it. Where a Children's Panel determines that a child should not be proceeded against, it may determine that no further action should be taken against the child or it may request the Commissioner of Police to administer a caution. To assist it, the Children's Panel may arrange for a conference of suitable persons to be convened and to report to the Panel any recommendations or proposals which the conference arrives at; in addition, the Children's Panel may inspect all relevant papers which are in the possession of the Department or of the Commissioner of Police. If a child is in custody, the panel is required to make its determination as soon as practicable after the period of 28 days after the report has been referred to

it. The clause also provides that a determination that a child not be proceeded against shall operate to release the child from custody and, if the child is on bail, to discharge his bail undertaking.

Clause 134 provides that a reference to a Children's Panel of a report or the administering of a police caution is not to be admissible in evidence in any court.

Clause 135 prevents action being taken by a Children's Panel from affecting any civil right or remedy which a person may have arising from an act or omission of a child.

DIVISION 3.—*Sentencing for Indictable Offences.*

Clause 136 provides that Division 3 of Part VIII applies, as well as to a child, to a person who committed an offence before he attained the age of 18 years and had not attained the age of 21 years when charged with the offence.

Clause 137 requires a child who is convicted of homicide, an offence punishable by death or penal servitude for life, an offence under section 61B of the Crimes Act, 1900, or an attempt to commit an offence under that section to be dealt with as if he were an adult, except that sentence of death is not to be pronounced and a sentence of penal servitude for life is not mandatory.

Clause 138 provides that in respect of other indictable offences a court may exercise the powers of a Children's Court or may sentence the child as an adult: if it chooses the latter course and orders imprisonment, it may direct that the period of imprisonment be served in a training centre.

DIVISION 4.—*Children's Community Service Orders.*

Clauses 139–163 contain provisions applying to children provisions similar to those contained in the Community Service Orders Act, 1979.

DIVISION 5.—*Remission of Cases for Imposition of Penalties.*

Clause 164 permits a superior court before which a person under 21 years of age is found guilty of a lesser indictable offence committed by him when a child to remit the case to the Children's Court for the imposition of sentence.

Clause 165 provides that no appeal shall lie against an order of remission referred to in clause 164 but that the normal avenues of appeal exist against any order of the Children's Court made after remission.

DIVISION 6.—*Mistake in Exercise of Jurisdiction.*

Clause 166 provides that nothing in Division 6 of Part VIII affects the operation of the proposed section 122 (age of criminal responsibility—10 years).

Clause 167 provides that any finding, order, etc., of a court shall in relation to a person charged with an offence not be invalidated because the charge should have first been referred to a Children's Panel but was not, and that any order of a court or a Children's Panel in respect of a person dealt with by a Children's Panel is not invalidated because the person was ineligible by reason of his age to be so dealt with.

Clause 168 permits decisions of a Children's Panel to be reviewed when the decisions are made on a mistaken assumption as to the age of the person alleged to have committed the offence in question.

Clause 169 requires, with certain exceptions, the Director to seek a review of any court decision which is made by a court on a mistaken assumption as to the age of the person affected by the decision, if, at the time the matter comes to the Director's notice, the person is still so affected. The clause also requires the court, on application for review and if it is satisfied that the charge should have been referred to a Children's Panel but was not, to remit the case to such a Panel and empowers it, in any other case, to set aside or quash the decision under review or remit the case to the appropriate court, to vary the decision or to order that the application be dismissed.

Clause 170 requires the Director to seek a review of an order, finding, etc., made by the Children's Panel when there is failure (otherwise than by reason of a mistaken assumption as to age) to obtain a determination of a Children's Panel which should have been obtained and empowers the Children's Court, on the application to review, to dismiss the application or, if it is of the view that a determination of a Children's Panel should have been obtained, to remit the case to such a panel.

Clause 171 provides that where a Children's Panel determines, in respect of a case remitted to it under proposed section 170, that the person whose case has been remitted should be tried for the offence, the existing decision of the court, with respect to the offence, is to stand but, where the Panel determines otherwise, the decision of the court shall be deemed to have been set aside or quashed.

Clause 172 precludes any action for damages or compensation because of anything done pursuant to a decision which is later quashed, set aside or varied under the provisions of proposed sections 169 and 170.

Clause 173 empowers a court to remit a case, in respect of which it appears not to have jurisdiction, to a Children's Panel or to the appropriate court.

PART IX.

THE CHILDREN'S COURT OF NEW SOUTH WALES.

DIVISION 1.—*General.*

Clause 174 contains definitions for the purposes of Part IX.

DIVISION 2.—*Constitution of the Children's Court.*

Clause 175 establishes the Children's Court of New South Wales.

Clause 176 makes provision for the appointment of a person to be the registrar of the Children's Court.

Clause 177 permits the Children's Court to be constituted by any one member of the Court or, where a proclamation is made by the Governor declaring that the jurisdiction of the Court may be exercised by a stipendiary magistrate sitting at a place specified in the proclamation, by such a stipendiary magistrate.

DIVISION 3.—Administration of the Children's Court.

Clauses 178–180 provide for the manner in which the Children's Court is to be administered.

DIVISION 4.—Conduct of Proceedings before the Children's Court.

Clause 181 applies the provisions of the Justices Act, 1902, to the Children's Court and to proceedings before it.

Clause 182 enables rules to be made with respect to the practice and procedure of the Children's Court.

Clause 183 provides for the preliminary hearing of charges in the Children's Court for offences (other than homicide, an offence punishable by death or penal servitude for life, an offence under section 61B of the Crimes Act, 1900, or the offence of attempting to commit an offence under that section) committed by a person in respect of whom the Court has jurisdiction unless the person charged informs the Court that he wishes to be committed for trial or the Court is of the opinion that the charge may not be properly disposed of in a summary manner, in which case the person will be committed for trial. Where the Court of its own motion commits a person for trial, it is obliged to transmit to the Attorney General and to the Minister a statement of its reasons.

Clause 184 contains provisions controlling the extent to which publicity may be given to care proceedings under Division 6 of Part VII.

Clause 185 prohibits the publication of the names of children, or reports identifying children, involved in any such care proceedings.

DIVISION 6.—Jurisdiction of the Children's Court.

Clause 186 confers jurisdiction on the Children's Court—

- (a) to hear criminal proceedings in which children are charged or in which persons between the ages of 18 and 21 years are charged with offences which they are alleged to have committed as children; and
- (b) in care proceedings under Division 6 of Part VII,

in addition to any other jurisdiction conferred on it under the proposed Act.

Clause 187 provides that the Children's Court shall have jurisdiction throughout the whole of New South Wales.

Clause 188 denies the Children's Court jurisdiction in relation to a traffic offence unless the offence arose out of the same circumstances as another offence in respect of which the same person is charged before the Children's Court.

Clause 189 denies to courts of petty sessions jurisdiction in matters within the jurisdiction of the Children's Court.

Clause 190 enables the Children's Court, where an adult is charged in another court jointly with another person in respect of whom the Children's Court has jurisdiction, to adjourn the hearing of the charge against the latter person until the charge against the adult is determined.

DIVISION 6.—*Finding of Guilt, Penalties and Compensation.*

Clause 191 applies the provisions of Division 6 of Part VII to offences dealt with by the Children's Court.

Clause 192 empowers the Children's Court, in respect of any offence committed by a person—

- (a) to release the person on probation for a maximum period of 2 years; or
- (b) to do either or both of the following:—
 - (i) require the person to enter into a recognizance to be of good behaviour for a maximum period of 2 years;
 - (ii) impose a fine not exceeding the maximum fine prescribed by law for the offence or \$500, whichever is the lesser.

Clause 193 provides that the Children's Court may, where the offence with which it is dealing, if committed by an adult, would render the adult liable to imprisonment—

- (a) exercise any of the powers referred to in clause 192;
- (b) make an order committing the person to the control of the Minister either generally or for a specific period not exceeding 2 years; or
- (c) make a children's community service order.

A general control order may not be made in respect of any offence for which an adult would be liable for a maximum period of imprisonment of less than 12 months and the period for which a control order may be made may not exceed the maximum period for which an adult might be imprisoned for the same offence.

Clause 194 precludes the Children's Court, when exercising its powers referred to in clause 193, from considering whether the child concerned is in need of care.

Clause 195 empowers the Children's Court, in response to any mitigating circumstances and instead of exercising any of its other powers, to dismiss the charge or to dismiss it and administer a caution.

Clause 196 empowers the Children's Court to order that any photograph, finger-prints or palm-prints relating to a particular offence shall be destroyed where the Court releases a person upon a recognizance to be of good behaviour, dismisses the charge or dismisses the charge and cautions the person charged.

Clause 197 empowers the Children's Court, in connection with a drug related offence, to have regard to certain specified circumstances and factors relating to the offence before passing sentence.

Clause 198 prohibits the Children's Court from proceeding to the conviction of a child who has not attained the age of 16 years and permits the Court to proceed to the conviction of a child who has attained the age of 16 years. The power of other courts to convict is unaffected.

Clause 199 denies to the Children's Court the power to commit a person to prison except when it is expressly authorised by the proposed Act to do so.

Clause 200 empowers the Children's Court, on application, to terminate, reduce or vary any term or condition of an order of probation.

Clause 201—

- (a) permits the apprehension of a person who has broken or is reasonably suspected of having broken the terms or conditions of his release on probation or of his recognizance;
- (b) authorises a justice to issue a summons or warrant in the first instance for the appearance of such a person before the Children's Court; and
- (c) authorises the Children's Court, if a breach is proved, to deal with the person in any manner in which it might have dealt with him for his original offence.

Clause 202 prohibits the Children's Court from ordering a child who has not attained the age of 16 years to pay compensation.

Clause 203 provides that if the Children's Court or a court exercising the powers of the Children's Court orders the payment of any sum of money and there is default of payment, the person may be ordered to make the payment for the appropriate period calculated in accordance with section 82 (2) of the Justices Act, 1902—

- (a) where the person has not attained the age of 18 years, in a training centre;
or
- (b) where he has attained that age, in a prison.

DIVISION 7.—*Appeals.*

Clause 204 provides for appeals against decisions of the Children's Court.

PART X.

CHILDREN AND OTHER PERSONS SUBJECT TO CONTROL.

DIVISION 1.—*General.*

Clause 205 contains definitions for the purposes of Part X.

Clause 206 sets out the objects of Part X.

Clause 207 empowers the Minister either alone or in conjunction with other persons or organisations to provide for the training, welfare and aftercare of persons who are or have been subject to control, i.e. in respect of whom a control order has been made.

Clause 208 empowers the Governor to appoint a medical officer for each training centre.

Clause 209 provides that there shall be a Visiting Justice, who shall be a stipendiary magistrate, for each training centre and that he shall visit and examine the training centre at prescribed intervals.

Clause 210 provides that every training centre and remand centre shall be controlled by the Minister and shall be inspected at least once every 3 months by a Departmental officer who shall report to the Minister.

Clause 211 provides that any judge of the Supreme Court or District Court, any member of the Children's Court and certain stipendiary magistrates may visit and examine any training centre or remand centre as he thinks fit.

Clause 212 provides for a person subject to control or detained in a remand centre to be brought before a court for the purposes of any pending legal proceedings, inquest or inquiry.

Clause 213 empowers the Director, with the approval of the Minister, to make rules for the conduct of training centres and remand centres.

Clause 214 validates orders which would otherwise be defective because of an inadequate description of a training centre or remand centre.

Clause 215 preserves the Royal prerogative of mercy in relation to persons subject to control.

Clause 216 preserves the functions, with respect to persons who are under lawful detention, of the Sheriff in relation to persons subject to control.

Clause 217 requires the Minister to endorse on the relevant control order the name and location of the training centre where a person subject to control is to be detained.

Clause 218 provides that certain documents shall constitute sufficient warrant to convey to and detain in a training centre a person subject to control or a person transferred to a training centre from a prison.

Clause 219 provides that a person detained in a training centre or remand centre is in the custody of the superintendent of the training centre or remand centre.

Clause 220 prohibits the placing of a person who is not an intellectually handicapped person in a training centre for intellectually handicapped persons.

Clause 221 requires persons subject to control to be detained in training centres, except that a child may be detained in a remand centre for a period of 21 days (or such longer period as the Minister allows) for the purposes of enabling an assessment of him to be made.

Clause 222 specifies the functions of the Minister in relation to persons subject to control. The Minister is required to determine the particular training centre in which such a person is to be detained and in addition, may—

- (a) transfer such a person from one training centre to another;
- (b) remove such a person subject to control from a training centre and place him in the care of a reputable person;
- (c) grant such a person leave to be absent from a training centre; or
- (d) discharge such a person from control.

Clause 223 specifies the functions of the Minister in relation to persons on remand. In addition to determining the remand centre in which such a person shall be detained, the Minister may—

- (a) transfer such a person from one remand centre to another; or
- (b) grant such a person leave in certain limited circumstances.

Clause 224 permits the Minister administering the Prisons Act, 1952, with the consent of the Minister administering the proposed Act, to direct the transfer from prison to a training centre of—

- (a) any prisoner under the age of 21 years;

- (b) any prisoner found by a court of summary jurisdiction to be an intellectually handicapped person and whom it recommended to be transferred to a training centre; or
- (c) any prisoner who in the opinion of both Ministers is an intellectually handicapped person.

Clause 225 provides that the Minister administering the Prisons Act, 1952, shall not exercise his powers with respect to the transfer of a prisoner on the basis that he is intellectually handicapped unless the procedures specified in the clause have been complied with.

Clause 226 applies the provisions of the Parole of Prisoners Act, 1966, to persons who are subject to control by reason of their transfer from prison or because a superior court has directed that they serve a period of imprisonment in a training centre and in respect of whom there has been specified a non-parole period.

Clause 227 preserves certain rights to remission of sentences under sections 462-464 of the Crimes Act, 1900.

Clause 228 empowers the Minister to direct the return to prison of a transferred prisoner (other than a prisoner who is detained in a training centre for intellectually handicapped persons) once he has been in a training centre for a period of 3 years or when he attains the age of 21 years, whichever first occurs, or where he is satisfied that the person is not profiting from his detention in a training centre.

Clause 229 contains provisions with respect to the discharge from detention of persons who are subject to control and for the remission of the periods of their detention.

Clause 230 empowers officers and members of the police force to apprehend any person subject to control or on remand who has absconded from a training centre or remand centre. The clause also empowers the Minister to order the apprehension of any person subject to control or on remand who is absent from the training centre on leave granted subject to terms or conditions if the Minister is of the opinion that those terms or conditions have been breached.

Clause 231 empowers a justice to issue a warrant for the apprehension of any person subject to control or on remand who has absconded or been removed from lawful custody or has breached the terms or conditions upon which he was granted leave of absence.

Division 2.—*Treatment of Persons Subject to Control or on Remand.*

Clause 232 requires that persons subject to control or on remand shall be allowed adequate exercise and makes provision for permitting those persons to engage in sports or leisure activities on training centre grounds or elsewhere.

Clause 233 requires the Director to provide every person subject to control with adequate clothing.

Clause 234 requires the Director to supply every person subject to control or on remand with sufficient food.

Clause 235 provides for the separation of different classes of persons subject to control.

Clause 236 requires the Director to supply persons subject to control or on remand with any necessary medical attention, treatment and medicine.

Clause 237 requires a person subject to control or on remand to surrender to the superintendent of the training centre or remand centre in which he is to be detained the property in his possession and makes provision for the manner in which that property is to be dealt with.

Clause 238 empowers the superintendent of a training centre, with the consent of a person subject to control, to segregate him, for psychological reasons, from other persons in the training centre subject to the following conditions:—

- (a) the nature and duration of the segregation is to be reasonable having regard to the age, mental condition and development of the person;
- (b) in any period of 72 hours, the period of segregation shall not exceed 12 hours;
- (c) the physical environment of the place of segregation is to be no less favourable than that of other places in the training centre; and
- (d) where the person is a child, he is to be able at all times to be seen by, to see and to speak to an officer.

It is expressly provided that segregation is not to be used for the purposes of punishment.

Clause 239 permits the segregation, on psychological grounds, of a person subject to control but only with his consent.

Clause 240 empowers the Director or the superintendent of a training centre for intellectually handicapped persons to direct the segregation of a person in such a centre (other than a child) for his own protection, for the protection of others in the centre or to preserve good order and discipline within the centre. It is expressly provided that this segregation is not to be used as a punishment and that a person may not be segregated under this clause for longer than a week unless the Director otherwise directs. The clause further provides that such a person may not be segregated for a period exceeding one month without further direction by the Director and a person so segregated is not to suffer any other deprivation unless the Director determines otherwise.

Clause 241 empowers the Director and the superintendent of a training centre or remand centre, as the case may be, to remove a person from the training centre to a hospital or other place for medical attendance and treatment.

Clause 242 prohibits the following punishments in training centres and remand centres:—

- (a) striking, cuffing, shaking or any other form of physical violence;
- (b) dosing with medicine or any other substance;
- (c) compulsion to remain in a constrained or fatiguing position; and
- (d) handcuffing or forcibly restraining without lawful excuse.

DIVISION 3.—*Offences.*

Clause 243 is an interpretation clause for the purposes of Division 3 of Part X.

Clause 244 imposes penalties for absconding from a training centre or remand centre or for failing to return from leave within 7 days of the expiration of the leave.

Clause 245 creates the offence of aiding a person subject to control or on remand to abscond from lawful custody or of conveying anything into a training centre or remand centre with intent to facilitate the absconding of a person subject to control or on remand.

Clause 246 creates the offence of rescuing a person by force from lawful custody.

Clause 247 creates the offences, by a Departmental officer or member of the police force, of wilfully permitting a person to escape from custody.

Clause 248 creates the offence of harbouring, maintaining or employing a person subject to control or on remand who is known to have absconded from lawful custody.

Clause 249 prohibits the bringing into a training centre or remand centre of alcohol or other drugs.

Clause 250 creates certain additional offences with respect to training centres and remand centres.

Clause 251 provides that proceedings for an offence referred to in clause 249 or 250 may be commenced within 12 months after the commission of the offence.

DIVISION 4.—*Discipline in Children's Training Centres and Remand Centres.*

Clause 252 provides that Division 4 of Part X applies to persons subject to control or on remand who have been ordered to be detained in a children's training centre or in a remand centre.

Clause 253 empowers the superintendent of a training centre or remand centre to impose certain punishments in respect of certain misconduct. The misconduct in respect of which such a punishment may be imposed is specified in Part 1 of Schedule 7 in respect of all persons and in Part 2 of Schedule 7 in respect of persons who are of or above the age of 16 years. The Director is empowered, however, to direct that a person of or above the age of 16 years who is charged with misconduct specified in Part 2 of Schedule 7 shall be treated as if he were under that age.

The clause requires the superintendent to inquire into the charge and, if the person is found guilty, either to dismiss the charge or to impose one of the following forms of punishment:—

- (a) caution;
- (b) deprivation of specified amenities or privileges for a maximum period of 7 days;
- (c) exclusion from recreational pursuits for a maximum period of 7 days;
- (d) additional constructive duties for a maximum period of 7 days; or
- (e) confinement in a room for a period not exceeding 6 hours.

If room confinement is ordered, the person to be confined is to be provided with some means of useful occupation, the physical environment of the place in which he is to be confined must be no less favourable than the physical environment

of other places in the centre and, where the person is a child, he is to be confined so that at all times he can be seen by and may see and speak to an officer. Any such punishment must not interfere with visits to the person by any of his relatives.

The superintendent's inquiry is to be conducted in accordance with prescribed procedures, the person charged is to be given reasonable opportunity to confer with persons who may be able to give evidence in the inquiry on his behalf, the rules of law relating to the admission of evidence are not to apply and the decision of the superintendent is not to be subject to appeal.

The superintendent is to be required to record any admissions made by the person charged, his findings and, if he finds the person guilty, the evidence on which he bases them and any decision made by him pursuant to the inquiry.

Clause 254 requires a person subject to control or on remand and detained in a children's training centre or a remand centre, who is of or above the age of 16 years and is charged with any misconduct referred to in Part 2 of Schedule 7, to be taken before a Children's Court to be dealt with and confers on the Children's Court in addition to the powers, referred to in clause 253, available to a superintendent, the power to commit the person to prison for a maximum period of 3 months.

DIVISION 5.—Discipline in Training Centres for Intellectually Handicapped Persons.

Clause 255 provides that Division 5 of Part X applies to persons subject to control who have been ordered to be detained in training centres for intellectually handicapped persons.

Clause 256 empowers the superintendent of a training centre for intellectually handicapped persons to inquire into any charge of misconduct referred to in Part 1 of Schedule 7 and, if he finds the person guilty, to dismiss the charge or to impose one of the following punishments:—

- (a) caution;
- (b) deprivation of specified amenities and privileges for a maximum period of 7 days;
- (c) exclusion from recreational pursuits for a maximum period of 7 days; or
- (d) additional constructive duties for a maximum period of 7 days.

If, however, the superintendent is of the opinion that the misconduct is of such a nature as to warrant its being dealt with as serious misconduct he may direct that the person be charged with serious misconduct pursuant to clause 257. The superintendent's inquiry under clause 256 is to be subject to the same procedural requirements as a superintendent's inquiry under clause 253. As under that clause, a punishment under this clause may not be imposed so as to interfere with visits from relatives.

Clause 257 provides that any person referred to in clause 254 who is charged with misconduct referred to in Part 2 of Schedule 7 is to be taken before a court of petty sessions held before the Visiting Justice for the training centre in which the person is detained. If the court finds the person guilty, it may impose any of the

punishments that the superintendent of a training centre may impose under clause 256 (except that deprivation of specified amenities or privileges may be for a maximum period of 14 days instead of 7 days) or may order—

- (a) the forfeiture of certain payments, exceeding the prescribed minimum, to which the person would otherwise be entitled; or
- (b) extension of the period of the control order to which the person is subject by a period of 3 months.

PART XI.

HANDICAPPED PERSONS WELFARE.

DIVISION 1.—*General.*

Clause 258 contains definitions for the purposes of Part XI.

Clause 259 sets out the object of Part XI.

Clause 260 empowers the Minister to provide a range of facilities and services to handicapped persons at their request and confers on the Minister a discretion to impose a charge or not.

Clause 261 provides for the establishment of an Intellectually Handicapped Persons Review Panel from which Intellectually Handicapped Persons Review Tribunals may be constituted.

Clause 262 permits a handicapped person of or above the age of 16 years to formally nominate a person or organisation as his representative to act on his behalf for the purposes of Division 1 of Part XI and provides that, where an intellectually handicapped person does not have a representative, the matter may be referred to an Intellectually Handicapped Persons Review Tribunal for nomination of a representative of the person.

Clause 263 empowers the Minister to declare an adult person to be an intellectually handicapped person under guardianship after the appropriate notices have been given and an Intellectually Handicapped Persons Review Tribunal has approved of his proposal to do so. The clause also empowers the Minister to make such an order in respect of a child, who is not a ward, on the application of a person responsible for the child or, in respect of a child who is a ward, after he has notified his proposal to do so to the child's parents and guardians and the persons who previously had his care and has considered any representations made by those persons within 21 days after they are served with notice of his proposal.

Clause 264 empowers a court, where it has found a person guilty of certain kinds of offences, to declare the person to be an intellectually handicapped person under guardianship.

Clause 265 provides that in relation to an intellectually handicapped person under guardianship, the Minister is the guardian of the intellectually handicapped person to the exclusion of any other person and has the custody of such a person and may exercise in relation to him the functions of a guardian of a person under the age of 14 years.

Clause 266 provides that, unless he previously ceases to be such a person, an intellectually handicapped person under guardianship ceases to be such a person—

- (a) where he was a child when he became such a person—upon his attaining the age of 18 years; or
- (b) where he was an adult when he became such a person—upon the expiration of 2 years.

Provision is, however, included whereby the duration of an order declaring a person to be an intellectually handicapped person under guardianship may be extended by periods of between 6 months and 2 years by an Intellectually Handicapped Persons Tribunal.

Clause 267 provides that any application for the discharge of an intellectually handicapped person under guardianship from that status shall be referred to an Intellectually Handicapped Persons Review Tribunal which may order the discharge of the person after considering certain reports. If the Tribunal decides not to discharge the person, it is empowered to make recommendations to the Minister concerning the future care, protection or supervision of the person.

Clause 268 provides that any intellectually handicapped person who is the subject of proceedings before an Intellectually Handicapped Persons Review Tribunal has a right to be heard in those proceedings, to call witnesses and to examine witnesses either personally or by his legal or other representative.

Clause 269 provides that where an intellectually handicapped person under guardianship absents himself from the place at which he is required by the Minister or his custodian to reside he may be returned to that place or to some other place designated by the Minister by a member of the police force or by an authorised officer.

Clause 270 empowers the Minister, where he considers it desirable to do so, to appoint the Public Trustee to manage the estate of an intellectually handicapped person under guardianship.

Clause 271 provides that the cost to the Crown of maintaining an intellectually handicapped person under guardianship, not exceeding the prescribed amount, shall constitute a debt due to the Crown and be recoverable from the person or his estate. The Minister is empowered, in cases of hardship, to waive the debt or to accept a smaller sum.

Clause 272 specifies functions of the Minister with respect to intellectually handicapped persons under guardianship. The Minister is required to provide for the accommodation, care and maintenance of an intellectually handicapped person under guardianship except where the person is placed by order of a court in the custody of another person or is able to make adequate arrangements for himself. The Minister is empowered to place such a person in the custody of the person in charge of a non-Government organisation or another reputable person and to arrange for the provision of any of the services referred to in clause 260 (2) (d)–(h). The Minister is also empowered to remove any such person from the custody of one person and place him in the custody of another, provided that if the intellectually handicapped person under guardianship is in the custody of a person pursuant

to a court order, the concurrence of the Intellectually Handicapped Persons Review Tribunal is required. A person who has the custody of an intellectually handicapped person under guardianship may not place that person in the care of another person without the consent of the Minister and the concurrence of such a Tribunal.

Clause 273 specifies the rights of a person who has been given custody of an intellectually handicapped person under guardianship.

Clause 274 empowers a court of summary jurisdiction to recommend to the Minister that a person who in its opinion is intellectually handicapped and who is sentenced by it to a term of imprisonment should be transferred to a training centre for intellectually handicapped persons.

DIVISION 2.—Intellectually Handicapped Persons Centres and Residential Centres for Handicapped Persons.

Clause 275 contains definitions for the purposes of Division 2 of Part XI of the Bill.

Clause 276 makes it an offence to conduct an intellectually handicapped persons centre or a residential centre for handicapped persons unless the premises on which it is conducted are licensed and the person conducting the centre is the licensed manager of the licensed premises.

Clause 277 makes it an offence if a person is the proprietor of premises on which an unlicensed centre referred to in clause 276 is conducted, if the premises do not comply with a condition of the licence that applies to them or if the proprietor contravenes or fails to comply with a condition of the licence that applies to him.

Clause 278 requires a licence for a centre referred to in clause 276 to specify certain particulars.

Clause 279 provides that a child who is residing in an unlicensed residential centre for handicapped persons and is not removed upon request shall be deemed to be a child in need of care under Division 6 of Part VII.

Clause 280 provides that if a child is in attendance at an unlicensed intellectually handicapped persons centre and is not removed upon request the person responsible for the child is guilty of an offence.

Clause 281 authorises the recovery of certain removal expenses of persons who have moved from unlicensed residential centres for handicapped persons.

Clause 282 enables a handicapped person and the Director, in certain circumstances, to recover certain removal expenses from a person who is convicted of being the proprietor of an unlicensed residential centre for handicapped persons.

Clause 283 empowers the Minister to exempt a person from the licensing requirements contained in Division 2 of Part XI.

PART XII.

APPEALS TO THE COMMUNITY WELFARE APPEALS TRIBUNAL.

Clause 284 contains definitions for the purposes of Part XII.

Clause 285 constitutes the Community Welfare Appeals Tribunal.

Clause 286 provides that the Community Welfare Appeals Tribunal may entertain appeals against specified decisions of the Minister or the Director, including decisions with respect to any of the licensing provisions of the proposed Act, decisions of the Minister to declare a child to be a ward, decisions of the Minister to delegate or to revoke a delegation of his powers as the guardian of a ward to the ward's foster parents and a decision of the Director in respect of a private foster placement which is made otherwise than by an authorised fostering agency.

A right of appeal is given in respect of refusals to make decisions as well as the decisions themselves.

Clauses 287-292 contain provisions with respect to the practice and procedure to be followed on appeals to the Community Welfare Appeals Tribunal and with respect to the powers of the Tribunal in relation to an appeal to it.

PART XIII.

MISCELLANEOUS.

Clause 293 requires the Minister, when requested so to do by the Children's Court or by an Intellectually Handicapped Persons Review Tribunal, to prepare a detailed report in respect of the person who is the subject of the proceedings before the Court or Tribunal. Access to the report is limited to the Court or Tribunal, courts of superior jurisdiction and their officers, Departmental officers, the prosecutor, if any, in proceedings and the representative of the child or person the subject of the report.

Clause 294 requires the superintendent of a facility to provide a monthly return of children who are detained in the facility awaiting trial or the hearing of an appeal. The return is to be made either to the Chief Justice of the Supreme Court or the Chief Judge of the District Court, depending upon where the trial is to be conducted or the appeal heard. Directions may be given by the person to whom the return is made concerning the expedition of the trial or appeal and disobedience of those directions may be punished as a contempt.

Clause 295 makes provision for the services of notices and other instruments which are required or authorised to be served under the proposed Act.

Clause 296 confers on Departmental officers and certain other persons powers of entry and regulates the exercise of those powers.

Clause 297 makes it an offence to wilfully hinder, obstruct, delay, assault or threaten with violence a Departmental officer in the exercise of his functions under the proposed Act.

Clause 298 creates certain offences with respect to impersonation of Departmental officers.

Clause 299 makes it an offence to make a false or misleading statement or to furnish false or misleading information in connection with an application under the proposed Act.

Clause 300 prohibits the disclosure of any information obtained in connection with the administration of the proposed Act or the regulations thereunder except in certain limited circumstances.

Clause 301 makes it an offence to remove a child or person from the care of a person in which he was placed pursuant to the proposed Act.

Clause 302 makes it an offence for a person to abuse any child or intellectually handicapped person.

Clause 303 makes it an offence for a person, without reasonable excuse, to neglect to provide adequately for any child or intellectually handicapped person in his care.

Clause 304 specifies the penalty for any offence under the proposed Act for which no penalty is otherwise specified.

Clause 305 provides that proceedings for an offence under the proposed legislation may be taken only before a court of petty sessions held before a stipendiary magistrate.

Clause 306 makes it an offence to commit contempt of the Children's Court.

Clause 307 regulates certain procedural and evidentiary matters.

Clause 308 provides that, except where expressly provided, the Bail Act, 1978, is to prevail if there is any inconsistency between that Act and the proposed Act.

Clause 309 empowers the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 contains provisions with respect to the constitution of the Community Welfare Advisory Council, the New South Wales Advisory Council on the Handicapped and the Community Services Training Council and with respect to the members of those Councils.

Schedule 2 contains provisions with respect to the procedure of the Councils referred to in Schedule 1 and of regional, local, special or other advisory committees constituted under section 21 (1) of the proposed Act.

Schedule 3 contains provisions with respect to the issue and holding of licences for child care services, residential child care centres, intellectually handicapped persons centres, residential centres for handicapped persons, fostering agency authorities and fostering authorities.

Schedule 4 contains provisions with respect to the constitution of the Children's Review Panel and the members thereof and with respect to the constitution of Boards of Review.

Schedule 5 contains provisions with respect to the constitution of the Children's Review Panel and members thereof.

Schedule 6 contains provisions with respect to the constitution of the Children's Court and members thereof.

Schedule 7 specifies, for the purposes of section 205 of the proposed Act, offences which are to be treated as misconduct or serious misconduct in training centres and remand centres.

Schedule 8 contains provisions with respect to the constitution of the Intellectually Handicapped Persons Review Panel and the members thereof and with respect to the constitution of the Intellectually Handicapped Persons Review Tribunals.

Schedule 9 contains provisions with respect to the constitution of the Community Welfare Appeals Tribunal, its members and its procedure.

COMMUNITY WELFARE BILL, 1981

No. , 1981.

A BILL FOR

An Act with respect to community welfare.

[MR JACKSON—14 May, 1981.]

See also Adoption of Children (Community Welfare) Amendment Bill, 1981; Bail (Community Welfare) Amendment Bill, 1981; Community Service Orders (Community Welfare) Amendment Bill, 1981; Coroners (Community Welfare) Amendment Bill, 1981; Crimes (Community Welfare) Amendment Bill, 1981; Defamation (Community Welfare) Amendment Bill, 1981; Infants' Custody and Settlements (Community Welfare) Amendment Bill, 1981; Justices (Community Welfare) Amendment Bill, 1981; Land and Environment Court (Community Welfare) Amendment Bill, 1981; Maintenance (Community Welfare) Amendment Bill, 1981; Mental Health (Community Welfare) Amendment Bill, 1981; Miscellaneous Acts (Community Welfare) Repeal and Amendment Bill, 1981; Parole of Prisoners (Community Welfare) Amendment Bill, 1981; Public Instruction (Community Welfare) Amendment Bill, 1981; Statutory and Other Offices Remuneration (Children's Panel Council) Amendment Bill, 1981.

Community Welfare.

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:—

5

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Community Welfare Act, 1981".

Commencement.

- 10 2. (1) This Part shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

- 15 3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–3.

PART II.—GENERAL—ss. 4–10.

PART III.—COMMUNITY WELFARE AND SOCIAL DEVELOPMENT—ss.
11–24.

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DIVISION 1.—*Functions of Minister and Director*—ss. 11–18.

DIVISION 2.—*Advisory Councils and Committees*—ss. 19–22.

DIVISION 3.—*Community Services Training Council*—ss. 23,
24.

PART IV.—GENERAL WELFARE ASSISTANCE—ss. 25–27.

Community Welfare.

PART V.—HOME CARE SERVICE OF NEW SOUTH WALES—*ss.* 28–37.

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PART II.

GENERAL.

Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

20 "abuse", in relation to a child, means assault or ill-treat the child, expose or subject the child to behaviour that psychologically harms him, or is likely to psychologically harm him, whether or not, in any case, with the consent of the child;

"assessment report" means a report referred to in section 293 (1);

25 "child" means a person who has not attained the age of 18 years;

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“Children’s Court” means the Children’s Court of New South Wales established under Part IX;

“Community Welfare Appeals Tribunal” means the Community Welfare Appeals Tribunal established pursuant to section 285;

5 “Community Welfare Fund” means the fund established under section 17;

“control order” means—

(a) an order made by the Children’s Court under section 193 (1) (b) that is in force; or

10 (b) an order referred to in section 193 (1) (b) made by a court exercising the power of the Children’s Court under section 138 (b), 156 (1) (b) or 161 (4) (b) that is in force;

15 “custody”, in relation to a child, means custody of the child to which a person is entitled by law;

“Department” means the Department of Youth and Community Services;

“Director” means the person for the time being holding office or acting as the Department Head of the Department;

“District Court” means the District Court of New South Wales;

20 “exempt premises” means—

(a) a State school or certified school within the meaning of the Public Instruction (Amendment) Act, 1916;

(b) a private hospital or nursing home licensed under the Private Hospitals Act, 1908;

25 (c) an admission centre, an authorised hospital or a mental hospital within the meaning of the Mental Health Act, 1958;

(d) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act, 1929, premises controlled by an associated organisation within the meaning of that Act or a hospital specified in the Fifth Schedule to that Act;

30 (e) any premises belonging to a prescribed class of premises; or

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(f) in relation to any provision of this Act, any premises declared by an order under subsection (3) to be exempt premises in relation to that provision;

5 “facility” means any premises the subject of an order in force under section 9 (3);

“function” includes a power, authority and duty;

“Home Care Service” means the corporation constituted pursuant to Part V;

“justice” means a justice of the peace;

10 “licensed” means licensed under this Act;

“maintenance” includes clothing, support, training and education;

“non-Government children’s home” means a home for the accommodation of children conducted by a non-Government organisation;

15 “non-Government organisation” means a corporation, society, association or other body of persons, not being the Crown, approved in writing by the Minister for the purposes of this Act;

“offence” means an offence punishable summarily or on indictment under this or any other Act or at common law;

20 “officer” means an officer or temporary employee, within the meaning of the Public Service Act, 1979, employed in the Department;

“parent”, in relation to a child, means—

(a) a guardian of the child; or

(b) a person who has the custody of the child,

but does not include the Minister or the Director;

25 “person responsible”, in relation to a child, means—

(a) a parent of the child;

(b) a person, not being the Minister or the Director, who has the care of the child; or

30 (c) where the child is in the care of the Minister or the Director—any person who had the care of the child immediately before the child came to be in the care of the Minister or the Director, as the case may be;

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“person subject to control” means—

- (a) a person the subject of a control order;
- (b) a person in respect of whom a direction referred to in section 138 (a) is in force; or
- (c) a person the subject of an order in force under section 224;

“premises” includes any land, building, vehicle or vessel;

“prescribed school” means any premises the subject of an order in force under section 9 (3) by which the premises are declared to be a prescribed school;

“prison” means a prison as defined in section 4 of the Prisons Act, 1952;

“regulations” means regulations under this Act;

“remand centre” means any premises the subject of an order in force under section 9 (3) by which the premises are declared to be a remand centre;

“school leaving age” has the meaning ascribed thereto by section 2A of the Public Instruction (Amendment) Act, 1916;

“shelter” means any premises the subject of an order in force under section 9 (3) by which the premises are declared to be a shelter;

“special facility” means any premises the subject of an order in force under section 9 (3) by which the premises are declared to be a special facility;

“superintendent”, in relation to a facility, means any person for the time being in charge of the facility;

“Supreme Court” means the Supreme Court of New South Wales;

“training centre” means any premises the subject of an order in force under section 9 (3) by which the premises are declared to be a children’s training centre or a training centre for intellectually handicapped persons;

“ward” means—

- (a) a child the subject of an order under section 80 (1) (c) (iii);

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(b) a child whom the Minister has under section 108 declared to be a ward and of whom the Minister is, under section 110 (1), the guardian; or

5 (c) a child declared to be a ward under this Act by an order made by the Adoption Tribunal under the Adoption of Children Act, 1965.

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, a reference to the performance of that duty.

(3) For the purposes of paragraph (f) of the definition of "exempt
10 premises" in subsection (1), the Minister may, by order published in the Gazette, declare any premises to be exempt premises in relation to any provision of this Act.

(4) A reference in this Act—

15 (a) to a person who has the care of a child or other person is a reference to a person who has the care of the child or other person, whether or not he has the custody of the child or other person; or

20 (b) to a child or other person who is or has been placed in the care of a person (in this paragraph referred to as the "care-giver") includes a reference to a child or other person who is or has been placed in the custody of the care-giver.

(5) A power conferred by this Act to place a child or other person in the care of a person does not, except in so far as the context or subject-matter otherwise indicates or requires, extend to granting custody of that child or other person.

25 (6) A person in whose care or custody a child is placed under this Act is not, by reason of that placement, the guardian of the child.

(7) A person in whose care a child is placed under this Act has, until he ceases under this Act or pursuant to any other law to have the care of the child, the same duties in respect of the child as if he had the custody
30 of the child.

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(8) Except in so far as the context or subject-matter otherwise indicates or requires, an expression used in a Schedule has the same meaning as it has in the relevant provisions of this Act relating to the subject-matter of that Schedule.

5 Objects of Act.

5. (1) The objects of this Act are—

- (a) to promote, protect, develop, maintain and improve the well-being of the people of New South Wales to the maximum extent possible;
- 10 (b) to promote the welfare of the family as the basis of community well-being;
- (c) to ensure the provision, to the maximum extent possible, of services for, and assistance to, persons disadvantaged by—
 - 15 (i) lack of adequate family or social support;
 - (ii) personal or family problems which inhibit adequate social functioning;
 - (iii) the breakdown of the family as a social unit;
 - (iv) lack of adequate food, shelter or other basic necessities;
 - (v) physical, intellectual or sensory handicap;
 - 20 (vi) being Aborigines, as defined in section 2 (1) of the Aborigines Act, 1969;
 - (vii) being members of an ethnic group which has inadequate access to services or resources available in the community;
 - (viii) age, whether young, advanced or other;
 - 25 (ix) lack of information about or access to services or resources available in the community; or
 - (x) residence in places which lack basic services essential to the proper functioning of those persons;
- (d) to encourage the establishment of community welfare and other
30 services necessary to promote, protect, develop, maintain and improve the well-being of persons;

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- (e) to assist and encourage collaboration among organisations and persons engaged in the promotion of community welfare or the provision of community welfare services;
- 5 (f) to promote and encourage research, education, instruction and training in matters of community welfare;
- (g) to promote and facilitate the provision by organisations and persons of services to complement any community welfare service;
- 10 (h) to promote the involvement of the community in the provision of community welfare services and in the social development of the community; and
- (i) to co-ordinate the allocation of funds for community welfare services.

(2) The provisions of any paragraph of subsection (1) shall not be construed as limiting or being limited by the operation of any other provision
15 of this Act.

Visitors.

6. (1) The Minister shall appoint eligible persons to be visitors in respect of each facility.

(2) A person is an eligible person for the purposes of subsection (1)
20 if—

- (a) he is a member of any advisory body constituted by or under this Act; or
- (b) in the opinion of the Minister, he is expert in any branch of
25 community welfare and has demonstrated concern for persons in need of community welfare services,

but not if he is an officer.

(3) Subject to section 30 (b) of the Interpretation Act, 1897, a visitor shall hold office as such for 2 years and is eligible for reappointment.

- (4) A visitor may, in respect of the facility for which he is a visitor—
30 (a) enter and inspect the facility at any reasonable time;

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- (b) confer privately with any person resident, employed or detained in the facility;
- (c) furnish to the Minister advice or reports on any matters relating to the conduct of the facility;
- 5 (d) make an application under section 119 (1) in respect of a child resident or detained in the facility; and
- (e) exercise such other functions as may be prescribed.

Annual report on operation of this Act.

7. (1) As soon as practicable after 30th June, but on or before 30th
10 September, in each year, the Director shall prepare and forward to the Minister a report on the operation of this Act during the period of 12 months ending on 30th June in that year.

(2) The Director may include in any report prepared by him under subsection (1) any report made by an advisory committee established under
15 section 21 (1) on its work and activities for the year to which the Director's report relates.

(3) As soon as practicable after 30th June, but on or before 30th
September, in each year, each advisory council established under section 19
20 or 20 shall prepare and forward to the Minister a report on its work and activities for the period of 12 months ending on 30th June in that year.

(4) The Minister shall lay the reports forwarded to him under subsections (1) and (3) or cause them to be laid before both Houses of Parliament as soon as practicable after their receipt by him.

Annual report on licensees.

25 8. As soon as practicable after 30th June, but on or before 30th September, in each year and whenever he is directed by the Minister to do so, the Director shall prepare and forward to the Minister a report on the activities of each licensee under a licence for a child care service, a residential child care centre, an intellectually handicapped persons centre or a residential

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centre for handicapped persons for the period of 12 months ending on 30th June in that year or, as the case may be, for the period specified in the Minister's direction.

Facilities for purposes of this Act.

5 **9. (1)** Premises to which this section applies are—

- (a) premises which belong to or are under the control of the Crown or a person acting on behalf of the Crown; and
- (b) where the person to whom premises belong or who has control of premises, by an instrument in writing given to the Minister, agrees to the premises being premises to which this section applies—
10 those premises.

(2) The Minister may establish and maintain, or may maintain, on premises to which this section applies by virtue of subsection (1) (a), such facilities as he considers necessary for the purpose of carrying out the
15 provisions of this Act.

(3) The Minister may, by order published in the Gazette, declare any premises specified or described in the order, being premises to which this section applies by virtue of subsection (1), to be—

- (a) a special facility;
- 20 (b) a facility for the accommodation of, or the provision of services for, children;
- (c) a facility for intellectually handicapped persons;
- (d) a prescribed school;
- (e) a shelter;
- 25 (f) a remand centre;
- (g) a children's training centre;
- (h) a training centre for intellectually handicapped persons; or
- (i) a facility for such other purposes as he considers necessary for the purpose of carrying out the provisions of this Act.

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(4) An order under subsection (3) declaring any premises specified or described in the order to be a facility referred to in that subsection, or a subsequent order made by the Minister and published in the Gazette, which states that any premises so specified or described shall be such a facility only when used in such circumstances or for such purposes as are specified in the order shall have effect according to its tenor.

(5) The Minister shall not exercise his powers under subsection (2) or (3) in respect of premises referred to in subsection (1) (a) which are under the control of a Minister, other than the Minister, or of a person acting on behalf of a Minister, other than the Minister, except with the written consent of the other Minister.

Delegation.

10. (1) In this section, "delegator" means the Minister or the Director.

(2) A delegator may, by instrument in writing—

15 (a) delegate to an officer the exercise of—

(i) any function (other than this power of delegation) conferred or imposed on him by or under this or any other Act or the regulations made under this or any other Act; or

20 (ii) any function conferred or imposed on him by virtue of his being the guardian of a person or his having the care or custody of a person;

(b) delegate to any other person the exercise of any function referred to in paragraph (a) (i) that is prescribed for the purposes of this paragraph; or

25 (c) where he is the Minister and is of the opinion that it is in the interests of a ward to do so, delegate to any person in whose custody he has placed the ward the exercise of any of the following functions conferred or imposed on him by virtue of his being the guardian of the ward, namely:—

30 (i) the power to consent to medical or dental treatment, as defined in section 50 (1), not involving surgery to the ward;

(ii) the power to make arrangements relating to the education of the ward;

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- (iii) the power to consent to the marriage of the ward;
- (iv) the power to consent to the issue of a passport to or for the ward;
- (v) such other functions as may be prescribed.

5 (3) A delegator may, by instrument in writing, revoke wholly or in part any such delegation.

 (4) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

10 (5) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

 (6) Notwithstanding any delegation under this section, a delegator
15 may continue to exercise all or any of the functions delegated by him.

 (7) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the delegator and shall be deemed to have been done or suffered by the delegator.

20 (8) An instrument purporting to be executed by a delegate of a delegator, in his capacity as such a delegate, shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the delegator and, until the contrary is proved, shall be deemed to be an instrument executed by a delegate of the delegator under
25 this section.

*Community Welfare.***PART III.****COMMUNITY WELFARE AND SOCIAL DEVELOPMENT.****DIVISION 1.—*Functions of Minister and Director.*****Powers of Minister in relation to community welfare services and social development.****11. (1) The Minister may—**

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- (a) conduct research into community welfare and social development and the adequacy and efficacy of legislation, and of the administration of legislation, relating to community welfare or social development that is administered by the Minister and evaluate the information gained from any such research;
 - (b) without limiting paragraph (a), conduct research to identify groups of persons who are or who are likely to become disadvantaged, as referred to in section 5 (1) (c);
 - (c) review, monitor and evaluate programmes for the provision of community welfare services and social development programmes which are carried out under this Act or are financed, wholly or partly, out of funds provided by Parliament for the administration of this Act;
 - (d) grant to such persons or organisations concerned in community welfare or social development as the Minister thinks fit such access to publications and information in the possession of the Department (including the results of any research or evaluation) as the Minister thinks fit and in such manner as the Minister considers would preserve any necessary confidentiality and the privacy of persons;
 - (e) develop and carry out, or provide assistance and support for the development and carrying out by persons or organisations of, programmes for the provision of community welfare services and social development programmes the objectives of which are consistent with any of the objects specified in section 5 (1); and
 - (f) with respect to any kind of assistance that may be granted under this Act, cause to be published guidelines specifying the circumstances in which that assistance may be granted.

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(2) Any assistance or support referred to in subsection (1) (e) may be provided on such terms and conditions as are agreed upon by the Minister and the person or organisation to whom or which the assistance or support is to be provided.

5 (3) In the exercise of his functions under subsection (1) (e), the Minister shall have regard to the desirability of exercising those functions with respect to programmes which—

- (a) develop and strengthen local neighbourhood and community interests;
- 10 (b) are based on the principle of self-help or the transfer of skills and knowledge; or
- (c) take into consideration the multi-cultural nature of the community.

(4) The provisions of any paragraph of subsection (1) shall not be construed as limiting or being limited by the operation of any other provision
15 of this Act.

Assistance funds for community welfare and social development programmes.

12. (1) The Minister may establish and maintain funds (in this section referred to as "assistance funds") for the purpose of providing assistance and support for any programmes, referred to in section 11 (1) (e), being
20 carried out or to be carried out by any persons, other than himself, or any organisations.

(2) An assistance fund shall consist of such money as may be provided from time to time by Parliament for the purpose of the carrying out of the programmes in relation to which the assistance fund is established
25 and maintained and such other money as may be allocated to the assistance fund from time to time from the Community Welfare Fund.

(3) Payments out of an assistance fund may be made for the purpose of carrying out the programmes in relation to which the assistance fund is established and maintained and may be so made only with the approval of
30 the Minister.

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(4) The Minister shall, before giving an approval for the purposes of subsection (3), take into consideration any recommendation made to him by any committee established under section 21 having functions to advise the Minister with respect to programmes in relation to which the approval is sought.

Honorary welfare officers.

13. (1) The Minister may appoint honorary welfare officers to carry out such duties as may be prescribed.

(2) The Director shall issue each honorary welfare officer with an authority card evidencing his appointment.

(3) The Director may provide such training and support for honorary welfare officers as he thinks fit.

Preparation of policies and programmes by the Director.

14. (1) The Director shall, when given directions by the Minister to do so and in accordance with those directions, cause to be prepared statements of proposed policies with respect to community welfare and social development and proposed programmes for the implementation of those policies.

(2) If the Minister so approves, the Director may—

- 20 (a) invite participation by such persons and organisations concerned in community welfare or social development as he thinks fit in assisting in the preparation of any such statements or programmes;
- (b) cause drafts of any such statements or programmes to be made available for public comment before their submission, with or without amendment, to the Minister; and
- 25 (c) cause any such statements or programmes and any documents or matter used in their preparation to be published and made available to the public.

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Assessment of community welfare and social development programmes by the Director.

15. The Director shall, when given directions by the Minister to do so and in accordance with those directions, cause—

- 5 (a) to be examined any proposed community welfare or social development programmes specified in the directions;
- (b) to be reviewed, monitored and evaluated, for the purpose of determining whether—
- 10 (i) they fulfil their objectives; and
- (ii) their objectives are of value to the community,
- the operation of any community welfare or social development programmes which are carried out under this Act or are financed, wholly or partly, out of funds provided by Parliament for the administration of this Act and which are specified in the directions;
- 15 and
- (c) to be furnished to the Minister a report of anything done pursuant to paragraph (a) or (b) and with respect to the priorities that should be accorded to the implementation or improvement of any of the programmes the subject of any such report and the resources necessary for the implementation or improvement of any such
- 20 programmes.

Arrangements to use services.

16. (1) For the purpose of the exercise of any functions under this Act or the regulations—

- 25 (a) of the Minister, the Minister may enter into an arrangement, either in consideration of the payment of a fee or without charge to him; or
- (b) of the Director or any officer, the Director, with the approval of the Minister, may enter into such an arrangement,
- 30 to use the services of any person or organisation.

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(2) For the purpose of the promoting of any of the objects specified in section 5 (1), the Minister or the Director, with the approval of the Minister, may enter into an arrangement, either in consideration of the payment of a fee or without charge to the Minister or the Director, as the case may be, to use the services of any person or organisation.

(3) Subsection (1) does not extend to authorising the Minister or the Director to enter into a contract of employment, except a contract of employment on a temporary or casual basis.

Community Welfare Fund.

10 17. (1) There shall be established by the Director a fund to be called the "Community Welfare Fund".

(2) The Community Welfare Fund shall consist of such money as may be provided by Parliament for payment into that fund and any money paid by any person to the Director for the purpose of the provision of
15 community welfare services generally or of a specified kind.

Application of Community Welfare Fund.

18. (1) The Community Welfare Fund may be applied by the Director, with the written approval of the Minister, for the purpose of—

20 (a) except as provided by paragraph (b)—providing community welfare services generally; or

(b) so far as the fund represents money paid for the purpose of providing community welfare services of a kind specified by the person who made the payment—providing community welfare services of that kind.

25 (2) Any application of the Community Welfare Fund may be made directly to persons in need of community welfare services or to non-Government organisations for the relief of those persons.

Community Welfare.

DIVISION 2.—Advisory Councils and Committees.

Community Welfare Advisory Council.

19. (1) There shall be a Community Welfare Advisory Council.

(2) The functions of the Community Welfare Advisory Council
5 are—

- (a) to advise the Minister on matters relating to community welfare or social development referred to it by the Minister;
- 10 (b) to furnish to the Minister reports on such matters relating to community welfare or social development as it considers should be brought to the notice of the Minister;
- (c) with the approval of the Minister, to conduct public inquiries into matters relating to community welfare or social development; and
- 15 (d) with the approval of the Minister, to conduct seminars on or investigations into matters relating to community welfare or social development.

(3) Schedules 1 and 2 apply in relation to the Community Welfare Advisory Council.

New South Wales Advisory Council on the Handicapped.

20 20. (1) There shall be a New South Wales Advisory Council on the Handicapped.

(2) The function of the New South Wales Advisory Council on the Handicapped is to furnish advice and information to the Minister and, where appropriate, through him to other Ministers and persons who are Department Heads, as defined in section 4 (1) of the Public Service Act, 1979, on
25 prescribed matters relating to the well-being of persons affected by any physical, intellectual or sensory handicap and on such other matters relating to those persons as the Council thinks appropriate.

(3) Schedules 1 and 2 apply in relation to the New South Wales Advisory Council on the Handicapped.

Community Welfare.

Establishment of other advisory bodies.

21. (1) The Minister may, by order, establish, in addition to the advisory councils established by this Act, such regional, local, special or other advisory committees as he thinks fit.

5 (2) The functions of a committee established under subsection (1) are the functions specified in respect of it in the instrument establishing it or in a subsequent instrument executed by the Minister and to advise the Minister on such matters as may be referred to it by the Minister.

(3) The Minister shall appoint one of the members of a committee
10 established under subsection (1) to be the Chairman of the committee.

(4) Schedule 2 applies in relation to a committee established under subsection (1).

Assistance to advisory councils and committees.

22. (1) The Minister may provide assistance (including financial assist-
15 ance) and support for the proper functioning of the Community Welfare Advisory Council, the New South Wales Advisory Council on the Handicapped and any committee established under section 21 (1).

(2) Without limiting his powers under any other provision of this Act, the Minister may make payments out of money provided by Parliament
20 for the purpose of providing assistance and support referred to in subsection (1).

DIVISION 3.—Community Services Training Council.

Constitution of Community Services Training Council.

23. (1) There shall be a Community Services Training Council.

Community Welfare.

(2) The functions of the Community Services Training Council are to make reports and recommendations to the Minister with respect to—

- 5 (a) the provision of courses of instruction and training for persons employed in, or considering employment in, the provision of community welfare services, either in a voluntary or a paid capacity;
- (b) the status of courses of instruction and training of the kind referred to in paragraph (a) that are conducted within or outside New South Wales;
- 10 (c) such other matters connected with instruction and training of the kind referred to in paragraph (a) as may be referred to it by the Minister; and
- (d) any other matter connected with instruction and training of the kind referred to in paragraph (a).

(3) Further functions of the Community Services Training Council
15 are—

- (a) to recommend courses of instruction and training of the kind referred to in subsection (2) (a) for approval by the Minister and to encourage the conduct and undertaking of those courses;
- 20 (b) to recommend, where appropriate, to the Minister the accreditation of courses of instruction and training referred to in section 24 (a);
- (c) to exercise a general supervision over the standards of instruction and training approved or accredited by the Minister, as referred to in paragraph (a) or (b);
- 25 (d) to conduct written, practical or oral examinations for the purposes of courses so approved and to have regard to the results of examinations conducted by other organisations in respect of courses so accredited; and
- (e) to issue certificates of qualification to persons who have passed
30 examinations for the purposes of courses so approved or who have attained a standard of proficiency acceptable to the Community Services Training Council in respect of courses so accredited.

(4) Schedules 1 and 2 apply in relation to the Community Services Training Council.

Community Welfare.

Minister may approve or accredit courses.

24. The Minister may, for the purposes of this Division—

- 5 (a) approve of courses of instruction and training for community welfare services where those courses are not required to be approved, or prescribed, in accordance with the provisions of, or the regulations made under, any other Act; and
- (b) grant accreditation to courses of instruction and training that are approved by him under paragraph (a).

PART IV.

10

GENERAL WELFARE ASSISTANCE.

Object of Part.

25. The object of this Part is to ensure, to the maximum extent possible, the provision of assistance to, and supportive services for, persons in need or distress and the provision of assistance and supportive services aimed at
15 preventing the breakdown of the family as a social unit.

General assistance.

26. (1) Without limiting section 11, the Minister may—

- 20 (a) provide assistance for the relief of persons in need or distress;
- (b) provide home support services, being assistance in the carrying out of work of a domestic or home-maintenance nature, to persons unable to carry out that work;
- (c) provide homemaker services, being services to assist families in the management of their homes, with the object of preventing the breakdown of the family as a social unit;
- 25 (d) provide services designed to meet the needs of children;

Community Welfare.

- (e) provide services designed to meet the needs of persons who are disadvantaged as referred to in section 5 (1) (c); and
- (f) provide assistance to non-Government organisations (including the Home Care Service) whose objects are or include the provision of assistance referred to in paragraph (a) or of services referred to in paragraph (b), (c), (d) or (e).

(2) Assistance referred to in subsection (1) (a) may consist of money or goods or be in such other form as the Minister approves.

Allowances for children and others in non-Government children's homes.

10 27. (1) The Minister may, subject to this section, grant an allowance to the person in charge of a non-Government children's home for the maintenance of a child, not being a ward, in respect of any period while he is resident in that home.

(2) Application for an allowance shall be made in writing, in such form as the Minister may require, by or on behalf of the person in charge of the non-Government children's home.

(3) An allowance under subsection (1) shall not be paid in respect of a child who has reached the school leaving age unless—

- 20 (a) the person is continuing to attend school or is engaged in full-time education or vocational training;
- (b) the person is an invalid or is otherwise incapacitated; or
- (c) the case possesses unusual features which call for special consideration.

25 (4) Where an allowance under subsection (1) is being paid in respect of a person immediately before he attains the age of 18 years, the Minister may, for the purpose of securing education or vocational training on a full-time basis for the person and subject to such conditions as may be prescribed and to such additional conditions as the Minister in any particular case thinks fit, from time to time and for periods not exceeding 6 months

30 at any one time, continue to pay an allowance in respect of the person while he is resident in the non-Government children's home.

Community Welfare.

(5) Where the person in charge of a non-Government children's home—

(a) has the care or custody of a person in respect of whom an allowance is payable under this section;

5 (b) notifies the Minister that the person referred to in paragraph (a) will, for a period not exceeding 8 weeks, be temporarily absent from the home with the leave of that person in charge; and

10 (c) makes arrangements satisfactory to the Minister for the maintenance of the person referred to in paragraph (a) during that period of absence,

the allowance shall continue to be payable during that period of absence.

(6) Where, pursuant to arrangements made by the person in charge of a non-Government children's home with the approval of the Director, or by the principal officer of an authorised private fostering agency, as defined in 15 section 44 (1), a child is placed in the care of a person for the purpose of fostering the child, the Minister may grant, in respect of the child, the same allowance as he would have granted under this section if the child had been residing in a non-Government children's home and may pay that allowance—

(a) directly to the lastmentioned person; or

20 (b) to that person in charge or that principal officer, as the case may be, for payment to the lastmentioned person.

(7) An allowance under this section may be paid after the expiration of the period in respect of which it is payable.

25 (8) Notwithstanding any other provision of this section, an allowance in respect of a person shall not be paid under this section if the Minister is not satisfied that the best interests of that person will be served by his remaining in the non-Government children's home in which he is resident or of the person in whose care he has been placed, as referred to in subsection (6).

Community Welfare.

PART V.**HOME CARE SERVICE OF NEW SOUTH WALES.****Interpretation: Pt. V.****28. In this Part—**

- 5 (a) a reference to the Service is a reference to the unincorporated body known immediately before the day appointed and notified under section 2 (2) as the Home Help Service of New South Wales; and
- (b) a reference to the corporation is a reference to the corporation constituted by section 29 (3) (b).

10 Incorporation of the Service.

29. (1) On payment of the appropriate fee prescribed by or under the Companies Act, 1961, an instrument purporting to be certified by the Chairman of the Executive Committee of the Service as a true copy of the constitution of the Service may be lodged in the office of the Corporate
15 Affairs Commission.

(2) Upon the Minister's being satisfied that an instrument has been lodged pursuant to subsection (1), he may, by notification published in the Gazette, declare that the Service is incorporated as provided by this Act.

(3) Upon the publication, pursuant to subsection (2), of a notification
20 relating to the Service—

- (a) the Service is dissolved; and
- (b) a corporation is constituted with the corporate name "Home Care Service of New South Wales".

Corporation subject to Minister's control and direction.

25 **30.** The corporation shall be subject to the control and direction of the Minister.

Community Welfare.

Constitution and decisions of the corporation and executive committee.

31. (1) Upon the publication, pursuant to section 29 (2), of a notification relating to the Service—

- 5 (a) the instrument that, pursuant to section 29 (1), was lodged with respect to the Service becomes the constitution of the corporation;
- (b) the executive committee referred to in that instrument becomes the executive committee of the corporation; and
- 10 (c) any decisions that, before publication of the notification, were made by the executive committee referred to in that instrument shall be deemed to be decisions made by the executive committee of the corporation.

(2) Where the executive committee of the corporation makes a decision at a duly convened meeting at which a quorum is present, the decision is the decision of the corporation except to the extent that it is inconsistent
15 with the constitution of the corporation.

(3) A person who, immediately before the publication, pursuant to section 29 (2), of a notification held an office as a member of the executive committee of the Service continues to hold that office under the constitution of the corporation until, in accordance with that constitution, he vacates his
20 office or his successor is appointed.

Amendment of constitution of the corporation.

32. An amendment of the constitution of the corporation does not take effect until an instrument certified under the seal of the corporation to be a true copy of the resolution effecting the amendment has been lodged in the
25 office of the Corporate Affairs Commission and the fee prescribed by or under the Companies Act, 1961, in respect of the lodgment has been paid.

Certain documents to be lodged by the corporation.

33. (1) The corporation contravenes this section unless, within 14 days after the publication, pursuant to section 29 (2), of a notification relating
30 to the Service, it lodges in the office of the Corporate Affairs Commission—

- (a) a copy of the notification; and

Community Welfare.

(b) an instrument specifying the address of the office of the corporation, and pays the fee prescribed by or under the Companies Act, 1961, in respect of the lodgment.

(2) The corporation contravenes this section unless, within 14 days after it changes the address of its office, it lodges in the office of the Corporate Affairs Commission an instrument specifying the new address and pays the fee prescribed by or under the Companies Act, 1961, in respect of the lodgment.

Penalty: \$100 and a further penalty of \$10 for every day during which the contravention continues.

Authentication of documents.

34. A notice, order, summons or other like document requiring authentication by the corporation is sufficiently authenticated if, instead of being sealed by the corporation, it is signed by the Chairman of the executive committee, or the secretary, of the corporation.

Service of documents on the corporation.

35. (1) A document relating to legal proceedings involving the corporation may be served—

- 20 (a) where the proceedings relate to a contravention of section 33 (1)
(b)—by serving it on the Chairman of the executive committee, or the secretary, of the corporation; or
- 25 (b) in any other case—by leaving it at the address of the office of the corporation last notified under section 33 with a member of the executive committee, or some person apparently in the service, of the corporation and apparently not under the age of 16 years.

(2) A document other than a document referred to in subsection (1) (a) may be served on the corporation by leaving it at, or by sending it to by pre-paid post to, the address of the office of the corporation last notified under section 33.

*Community Welfare.***Continuation of service of employee of the Service.**

36. (1) A person employed by the Service immediately before the publication, pursuant to section 29 (2), of a notification relating to the Service becomes, upon publication of the notification, an employee of the corporation with the same status, upon the same terms and conditions and with the same rights, privileges and obligations as an employee of the corporation as he enjoyed or was subject to immediately before publication of the notification.

(2) Where a person is employed by the corporation pursuant to subsection (1), his service with the Service shall be deemed to be service with the corporation.

Transfer to corporation of assets and liabilities of the Service.

37. Upon the publication, pursuant to section 29 (2), of a notification relating to the Service—

15 (a) there becomes vested in the corporation—

(i) any real or personal property that, immediately before the publication of the notification, was vested in the Service;

20 (ii) any right or interest in real or personal property that, immediately before that publication, was a right or interest so vested; and

(iii) the management and control of any real or personal property that, immediately before that publication, was under its management or control;

25 (b) any money and liquidated or unliquidated claims that, immediately before publication of the notification, were payable to, or recoverable by, that Service become money payable to, or claims recoverable by, the corporation;

30 (c) any debts due and money payable by, and any claims, liquidated or unliquidated, recoverable against, the Service or any person for or on behalf of the Service (being debts, money and claims due, payable or recoverable immediately before publication of the notification) become debts due and money payable by, and claims recoverable against, the corporation;

Community Welfare.

- 5 (d) any proceedings that, immediately before publication of the notification, were pending at the suit or on the application of the Service or any person for or on behalf of the Service become proceedings pending at the suit or on the application of the corporation;
- 10 (e) any contract, agreement or undertaking entered into with, and any security given to or by any person for or on behalf of, the Service and in force immediately before publication of the notification becomes a contract, agreement or undertaking entered into with, and a security given to or by, the corporation; and
- (f) the corporation may enforce and realise any security or charge in favour of the Service, or any person for or on behalf of the Service, as if it were a security or charge in favour of the corporation.

15

PART VI.**DISASTER WELFARE SERVICES.****Interpretation: Pt. VI.****38. (1) In this Part—**

“disaster” means an occurrence, whether or not due to natural causes—

- 20 (a) that causes loss of life, injury, distress or danger to persons or the destruction of, or damage to, property; and
- (b) that the Minister, by order in writing, has declared to be a disaster for the purposes of this Part;

25 “disaster victim” means a person who is in need or distress as a result of a disaster;

Community Welfare.

“private disaster relief fund” means a fund raised by or resulting from an appeal for support for the purpose of assisting persons who are or may become disaster victims of disasters and includes any investments made out of money in such a fund, but does not include the Community Disaster Relief Fund.

(2) A reference in this Part to a particular disaster includes a reference to a particular kind of disaster.

(3) The Minister—

(a) shall not make an order referred to in paragraph (b) of the definition of “disaster” in subsection (1) with respect to an occurrence unless he is of the opinion that the effect of the occurrence is or is likely to be of such magnitude as to warrant its being treated as a disaster for the purposes of this Part; and

(b) shall, as soon as practicable after making such an order, cause a copy of the order to be published in the Gazette.

Co-ordination of welfare services for disaster victims.

39. (1) The Director may, in accordance with any directions given to him by the Minister, take such steps as he thinks fit for the purpose of the co-ordination of the provision of community welfare services for disaster victims.

(2) The Director shall not exercise his functions under subsection (1) in a manner inconsistent with any of the provisions of the State Emergency Services and Civil Defence Act, 1972.

Community Disaster Relief Fund.

40. (1) There shall be established by the Director a fund to be called the “Community Disaster Relief Fund”.

(2) The Community Disaster Relief Fund shall consist of—

(a) any money paid to the Director by any person for the relief of disaster victims generally or disaster victims of a particular disaster specified by the person making the payment; and

Community Welfare.

(b) any fund transferred to the Director under section 42.

Application of Community Disaster Relief Fund.

41. (1) The Community Disaster Relief Fund—

(a) to the extent that it represents—

- 5 (i) money paid to the Director under section 40 (2) (a) for the relief of disaster victims of a particular disaster; or
- (ii) a private disaster relief fund raised by or resulting from an appeal for support for the purpose of assisting persons suffering distress as a result of a particular disaster,
- 10 shall, so far as it is practicable in the opinion of the Director to do so, be applied for the purpose of assisting disaster victims of that disaster; or

(b) except as provided by paragraph (a), shall be applied—

- (i) for the purpose of assisting disaster victims of any disaster;
- 15 (ii) for the purpose of acquiring stores and equipment to be used for the purpose of assisting victims of future disasters; or
- (iii) for the purpose of planning, and training persons, to cope with the effects of disasters.

20 (2) An application of the Community Disaster Relief Fund may be made directly for any purpose referred to in subsection (1) or to non-Government organisations for any such purpose.

Transfer of private disaster relief funds to Community Disaster Relief Fund.

25 **42. (1) Any person in whom a private disaster relief fund is vested may transfer that fund to the Director to form part of the Community Disaster Relief Fund.**

(2) Where the Governor is satisfied that—

- (a) a fund is a private disaster relief fund established in respect of a particular disaster;

Community Welfare.

(b) no payment has been made from the fund for a period of 1 year or more to a disaster victim of that disaster; and

(c) the fund is not likely to be applied for making payments, or any further payments, to disaster victims of that disaster,

5 the Governor may, by order published in the Gazette, vest the fund in the Director to form part of the Community Disaster Relief Fund.

(3) A fund may be transferred to the Director under subsection (1) notwithstanding any trust on which it is held.

(4) A fund transferred to the Director under subsection (1) or vested
10 in him under subsection (2) shall be held by the Director freed and discharged from any trust to which it was subject immediately before the transfer or vesting.

Investment of Community Disaster Relief Fund.

43. (1) The Community Disaster Relief Fund may be invested in any
15 securities authorised under section 14 of the Trustee Act, 1925, for the investment of trust funds.

(2) The Director may make arrangements with the Public Trustee for the management of the Community Disaster Relief Fund on his behalf.

PART VII.

20

CHILDREN'S WELFARE.

DIVISION 1.—General.

Interpretation: Pt. VII.

44. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

25 "assessor" means a person who is a member of the panel of assessors referred to in section 79;

Community Welfare.

“authorised private fostering agency” means the holder of a fostering agency authority;

5 “authorised supervisor”, in relation to a licence for a child care service or the holder of such a licence, means the person for the time being specified under section 64 (1) (c) in the licence;

“certified school” has the meaning ascribed thereto by section 2 (1) of the Public Instruction (Amendment) Act, 1916;

“certified special school” has the meaning ascribed thereto by section 2 (1) of the Public Instruction (Amendment) Act, 1916;

10 “child care service” means—

(a) any service of a prescribed class or description provided by a person for the purpose of educating, minding or caring for, but without providing residential care for, such number (disregarding any children who are related to the person, as referred to in subsection (2)), not exceeding the number prescribed, and such class of children as are prescribed in respect of the class or description of service and that is provided for fee, gain or reward;

15
20 (b) any service declared to be a child care service by an order in force under subsection (3) (a); or

(c) the organising or arranging of the provision of any service referred to in paragraph (a) or (b),

but does not include any such service—

25 (d) provided by a person at premises which are the abode of all, or all but one, of the children for whom that person provides the service; or

(e) provided—

(i) at a licensed residential child care centre;

(ii) at exempt premises; or

30 (iii) by the holder of a fostering authority in accordance with the fostering authority held by him;

Community Welfare.

“children’s employment licence” means a licence in force under section 76;

“fostering agency authority” means an authority granted as a fostering agency authority under clause 3 of Schedule 3 that is in force;

5 “fostering authority” means an authority granted as a fostering authority under clause 3 of Schedule 3 that is in force;

“licence” means a licence for a child care service or a residential child care centre granted under clause 3 of Schedule 3 that is in force;

10 “licensed manager”, in relation to a licensed residential child care centre, means the person for the time being specified under section 64 (2) (c) in the licence for that centre;

“licensed premises” means premises specified under section 64 (2) (b) in a licence for a residential child care centre;

15 “principal officer”, in relation to an authorised private fostering agency, means the person for the time being specified under section 69 (1) (b) in the fostering agency authority held by that agency;

“private fostering agency” means a person who performs (whether or not for fee, gain or reward) private fostering services with respect to children other than children of whom he is a parent;

20 “private fostering service” means the activity of conducting negotiations or making arrangements with a view to the placement of children for fostering;

“proprietor”, in relation to premises, means—

25 (a) where the premises are not leased—the owner or any joint owner of the premises; or

(b) where the premises are leased—the lessee or any joint lessee who is entitled to immediate possession of the premises;

“residential child care centre” means any premises—

30 (a) at which 6 or more children (disregarding any children who are related, as referred to in subsection (2), to the person in charge of the premises) reside and are cared for for fee, gain or reward; or

Community Welfare.

(b) declared to be a residential child care centre by an order in force under subsection (3),

but does not include any such premises that are exempt premises;

5 "special school" has the meaning ascribed thereto by section 2 (1) of the Public Instruction (Amendment) Act, 1916;

"State school" has the meaning ascribed thereto by section 2 (1) of the Public Instruction (Amendment) Act, 1916.

(2) For the purposes of this Part, a child is related to another person—

- 10 (a) if he is the child, step-child, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by consanguinity or affinity) of the other person;
- (b) if the other person is the guardian of the child; or
- 15 (c) if the child has been placed in the care or custody of the other person—
- (i) by the Minister pursuant to Division 7 or Part X;
 - (ii) by a competent court; or
 - (iii) in accordance with the provisions of the Adoption of Children Act, 1965.

20 (3) The Minister may, by order in writing served on—

- (a) a person by whom any service that but for the fact that it is being provided otherwise than for fee, gain or reward, would be a child care service under paragraph (a) of the definition of "child care service" in subsection (1), declare the service to be a child care service; or
- 25 (b) the proprietor or occupier of premises, declare those premises to be a residential child care centre if those premises would, but for the fact that any one or more of the children (disregarding any children who are related, as referred to in subsection (2), to the person in charge of the premises) residing at those premises are cared for otherwise than for fee, gain or reward, be a residential child care centre under paragraph (a) of the definition of "residential child care centre" in subsection (1).
- 30

Community Welfare.

- (4) For the purposes of this Part, a child is in need of care if—
- (a) adequate provision is not being, or is likely not to be, made for his proper care;
 - (b) he is being, or is likely to be, abused;
 - 5 (c) he is being, or is likely to be, harmed as a consequence of—
 - (i) his behaviour; or
 - (ii) the conduct of any person with whom he is residing or the conditions in which he is residing;
 - (d) he is not under competent and proper guardianship; or
 - 10 (e) there is a substantial breakdown in the relationship between the child and the person having the care of the child.

Objects of Part.

45. (1) The objects of this Part are—
- 15 (a) to identify the special needs of children, whether or not under parental care, with respect to services necessary to promote their optimum development;
 - 20 (b) to ensure the provision of any necessary services for, and assistance to, families so that, where necessary, the care available to children in the family environment can be enhanced to such a degree as to enable them to remain in or return to family care; and
 - (c) to ensure that children for whom a child care service is provided or who reside in a residential child care centre receive the optimum standard of care.
- (2) With the object of ensuring the provision of any necessary
- 25 welfare services aimed at complementing the care given to children by persons responsible for them, the Minister may—
- (a) disseminate information to the community with respect to welfare services for children and their families;
 - 30 (b) provide assistance and support for non-Government organisations and persons concerned in the establishment or development of welfare services for children and their families; and

Community Welfare.

- (c) furnish advice to non-Government organisations and persons concerned in the provision of welfare services for children and their families with respect to the quality of any such services and the equipment needed to provide them.

5 Temporary custody orders.

46. (1) The Minister, on application made by—

- (a) a person who has the care of a child under the age of 16 years; or
(b) a child of or above the age of 16 years,

may make a temporary custody order in respect of the child if the child
10 is, in the opinion of the Minister, in need of care.

(2) The Minister may, of his own motion, make a temporary custody order in respect of a child subject to control if the child would, upon his ceasing to be subject to control by virtue of the making of the order, be, in the opinion of the Minister, in need of care.

15 (3) The Minister shall not make a temporary custody order in respect of a child on an application made by a person other than a parent of the child unless the Minister has informed such of the parents of the child as can reasonably be contacted that an application for such an order has been made.

20 (4) Where the Minister has made a temporary custody order in respect of a child on an application made by a person other than a parent of the child, the Minister shall inform such of the parents of the child as can reasonably be contacted (other than a parent whom he has informed as referred to in subsection (3)) that he has made a temporary custody order
25 in respect of the child.

(5) The Minister shall have the custody of a child in respect of whom there is in force a temporary custody order.

(6) While the Minister has the custody of a child pursuant to a temporary custody order, he shall provide for the care of the child as if the
30 child were a ward.

Community Welfare.

(7) The Minister shall terminate a temporary custody order—

- (a) upon the receipt by an officer of a request for the termination of the order—
- 5 (i) where the order was made pursuant to an application referred to in subsection (1) (a)—made by a person who, immediately before the Minister made the order, was a person responsible for the child; or
- 10 (ii) where the order was made pursuant to an application referred to in subsection (1) (b)—made by the person who made the application;
- (b) where the order was made under subsection (2)—upon the expiration of the period for which the control order that ceased to be in force upon the making of the temporary custody order would have been in force under section 193 but for the making of the temporary custody order;
- 15 (c) when, being satisfied that his custody of the child is no longer warranted, the Minister orders that the custody be terminated;
- (d) upon the child the subject of the order attaining the age of 18 years; or
- 20 (e) at the expiration of the period of 3 months after the making of the temporary custody order,

whichever event first occurs.

Unauthorised foster placements prohibited.

47. (1) Where—

- 25 (a) a person places a child in the care of another person, not being the holder of a fostering authority, for the purpose of the fostering of the child; and

Community Welfare.

(b) the other person has (whether or not for fee, gain or reward) the care of the child for a period, or for periods in the aggregate, exceeding 50 days in any period of 12 months after the child was last so placed in his care,

5 the person who so placed the child is guilty of an offence, unless the placement was made—

(c) by an authorised private fostering agency; or

(d) by or with the written approval of the Director.

(2) Subsection (1) does not apply in respect of the placement of a
10 child in the care of a person to whom the child is related, as referred to in section 44 (2).

Register of children in alternative care.

48. (1) In this section, the reference to a child in alternative care is a reference to—

- 15 (a) a child who resides in a facility, otherwise than as a member of the household of any person who resides in the facility;
- (b) a child who has been placed in the care or custody of a person by the Minister pursuant to Division 7 or Part X;
- 20 (c) a child who resides in licensed premises, otherwise than as a member of the household of any person who resides in the premises;
- (d) a child in the care of the holder of a fostering authority pursuant to the authority; and
- 25 (e) a child, not being a child referred to in paragraph (a), (b), (c) or (d), in the care of a person other than the parent of the child, pursuant to any law, whether or not of New South Wales.

(2) The Director shall maintain a register in which he shall enter particulars, furnished to him in accordance with the regulations or otherwise, of every child in alternative care for a continuous period of 14 days or more.

*Community Welfare.***Special medical examination.**

49. (1) In this section—

5 “parent”, in relation to a child to whom this section applies, includes the person in whose care the child was immediately before he became a child to whom this section applies;

“special medical examination” means a vaginal or anal examination or a penile examination involving the insertion of anything into the penis.

(2) This section applies to—

10 (a) a child placed in a facility pursuant to any provision of this Act; and

(b) a child who resides in licensed premises, otherwise than as a member of the household of any person who resides in the premises.

15 (3) A special medical examination of a child to whom this section applies shall not be carried out unless—

20 (a) in the case of a child under the age of 16 years, the Minister has informed such of the parents of the child as are living and can reasonably be contacted of the rights of a parent of a child under this section; and

(b) in the case of a child who has attained the age of 14 years, the Minister has informed the child of his rights under this section.

25 (4) Where a medical practitioner has advised the Minister that he considers that it is medically necessary to carry out a special medical examination of a child to whom this section applies, a second independent medical opinion as to whether the examination is medically necessary shall be obtained upon request—

(a) in the case of such a child under the age of 14 years—by a parent of the child;

30 (b) in the case of such a child who is 14 or 15 years of age—by a parent of the child or the child; or

Community Welfare.

(c) in the case of such a child who has attained the age of 16 years—
by the child.

(5) A special medical examination of a child to whom this section
applies shall not be carried out—

- 5 (a) unless the Minister, after considering the advice of the medical
practitioner as referred to in subsection (4) and, if a second
independent medical opinion was obtained under that subsection,
that second opinion, is satisfied that the examination is medically
necessary; and
- 10 (b) unless—
- (i) in the case of such a child under the age of 14 years—a
parent of the child has consented in writing to the exami-
nation being carried out;
- 15 (ii) in the case of such a child who is 14 or 15 years of age—
a parent of the child and the child have consented in writing
to the examination being carried out;
- (iii) in the case of a child who has attained the age of 16 years
—the child has consented in writing to the examination
being carried out; or
- 20 (iv) the Children's Court has, under subsection (7), ordered
that the examination be carried out.

(6) A consent referred to in subsection (5) (b)—

- (a) given by a child or a parent is void if subsection (3) has not been
complied with with respect to the child or parent; or
- 25 (b) given by a child is void if the child has not been counselled as
described in subsection (9).

(7) The Children's Court may, on the application of the Director
and on its being satisfied that any consent, referred to in subsection (5) (b),
to a special medical examination is unreasonably refused or cannot reasonably
30 be obtained, order that the examination be carried out.

Community Welfare.

5 (8) Where the Minister is satisfied that it is medically necessary to carry out a special medical examination of a child to whom this section applies and the consent or consents required in subsection (5) has or have been obtained or the Children's Court has, under subsection (7), ordered that the examination be carried out—

- (a) in the case of such a child under the age of 14 years—a parent of the child;
- (b) in the case of such a child who is 14 or 15 years of age—a parent of the child or the child; or
- 10 (c) in the case of such a child who has attained the age of 16 years—the child,

may nominate a medical practitioner to carry out the examination or may state a preference as to whether the examination shall be performed by a male or female medical practitioner.

15 (9) Before a special medical examination of a child to whom this section applies is carried out, the child shall be counselled in relation to the nature of the examination and its effects and such other matters as may be prescribed by a suitable person other than the medical practitioner who is to carry out the examination.

20 (10) A special medical examination of a child to whom this section applies shall not be carried out except—

- (a) by the medical practitioner nominated under subsection (8) by the child or a parent of the child, as the case may be;
- 25 (b) if no medical practitioner has been so nominated but a preference has been stated under subsection (8), by a medical practitioner nominated by the Minister, in accordance with such preference as may have been stated under that subsection;
- (c) if no medical practitioner has been so nominated and a preference has not been so stated, by a medical practitioner nominated by the Minister; or
- 30 (d) if the Minister is of the opinion that it is impracticable for the examination to be carried out by the medical practitioner so nominated or in accordance with a preference so stated, by a medical practitioner nominated by the Minister.

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(11) Where a special medical examination of a child to whom this section applies is carried out—

- (a) pursuant to a consent referred to in subsection (5) (b) given by a parent of the child; or
- 5 (b) pursuant to an order of the Children's Court under subsection (7), and the special medical examination is carried out in accordance with the provisions of this section, it shall be deemed, for the purpose of section 49 (1) of the Minors (Property and Contracts) Act, 1970, that a parent or guardian of the child consented to the examination being carried out.

10 Ordinary medical and dental treatment.

50. (1) In this section—

“dental treatment” has the meaning ascribed thereto by section 49 (4) of the Minors (Property and Contracts) Act, 1970;

“dentist” means a dentist registered under the Dentists Act, 1934;

15 “medical treatment” has the meaning ascribed thereto by section 49 (4) of the Minors (Property and Contracts) Act, 1970, but does not include a special medical examination, as defined in section 49 (1);

“prescribed person”, in relation to a child referred to in—

(a) subsection (2) (a), means the Minister;

20

(b) subsection (2) (b), means—

(i) in respect of medical or dental treatment not involving surgery—the Minister or the person in whose care or custody the child has been placed; or

25

(ii) in respect of medical or dental treatment involving surgery—the Minister;

(c) subsection (2) (c), means—

30

(i) in respect of medical or dental treatment not involving surgery—the Director or any other person in whose care the child has been placed by the Director; or

(ii) in respect of medical or dental treatment involving surgery—the Director;

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(d) subsection (2) (d), means—

(i) in respect of medical or dental treatment not involving surgery—the person in charge of the licensed premises in which the child resides; or

5 (ii) in respect of medical or dental treatment involving surgery—where, after reasonable enquiry, no parent or guardian, referred to in section 49 (1) of the Minors (Property and Contracts) Act, 1970, of the child can be found or it is impracticable to obtain the consent of such a parent or guardian of the child, the person in charge of the licensed premises in which the child resides;

(e) subsection (2) (e), means—

15 (i) in respect of medical or dental treatment not involving surgery—the person in whose care the child has been placed; or

20 (ii) in respect of medical or dental treatment involving surgery—where, after reasonable enquiry, no parent or guardian, referred to in section 49 (1) of the Minors (Property and Contracts) Act, 1970, of the child can be found or it is impracticable to obtain the consent of such a parent or guardian of the child and the child was placed in the care of the holder of a fostering authority by an authorised private fostering agency, the principal officer of that agency or where, after reasonable enquiry, no such parent or guardian of the child can be found or it is impracticable to obtain the consent of such a parent or guardian of the child and the child was placed in the care of the holder of a fostering authority otherwise than by an authorised private fostering agency, the Director; or

(f) subsection (2) (f), means—

35 (i) in respect of medical or dental treatment not involving surgery—the person in whose care the child has been placed; or

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(ii) in respect of medical or dental treatment involving surgery—the Director.

(2) This section applies to—

- 5 (a) a child who resides in a facility, otherwise than as a member of the household of any person who resides in the facility;
- (b) a child who has been placed in the care or custody of a person by the Minister pursuant to Division 7 or Part X;
- (c) a child in the care of the Director under Division 6;
- 10 (d) a child who resides in licensed premises, otherwise than as a member of the household of any person who resides in the premises;
- (e) a child in the care of the holder of a fostering authority pursuant to the authority; and
- 15 (f) a child, not being a child referred to in paragraph (a), (b), (c), (d) or (e), in the care of a person other than the parent or guardian, referred to in section 49 (1) of the Minors (Property and Contracts) Act, 1970, of the child, pursuant to any law, whether or not of New South Wales.

20 (3) Where the prescribed person has consented to medical or dental treatment of a child to whom this section applies under the age of 16 years being carried out, it shall be deemed, for the purposes of section 49 of the Minors (Property and Contracts) Act, 1970, that a parent or guardian of the person of the child consented to the treatment being carried out.

(4) This section does not affect—

- 25 (a) such operation as a consent (whether or not a consent referred to in subsection (3) or in section 49 of the Minors (Property and Contracts) Act, 1970) may have otherwise than as provided by this section; or
- 30 (b) the circumstances in which medical or dental treatment may be justified in the absence of consent.

Community Welfare.

Tattooing of children prohibited.

51. A person who in any manner tattoos any part of the body of a child is guilty of an offence unless he has first obtained the written permission of a parent of the child to tattoo the child in that manner on that part of his body.

Removal of child from lying-in home.

52. (1) In this section, "lying-in home" means any building used for the purpose of receiving (whether or not for fee, gain or reward) more than one woman for confinement.

10 (2) The person in charge of a lying-in home who permits a child who is not in the charge of his mother to be taken from the home without first obtaining the written consent of the Director is guilty of an offence.

Lump sum payment for care of children prohibited.

15 53. (1) Except pursuant to an order of a court specifying the terms on which he may do so, a person shall not, in consideration of the receipt by him of any sum of money or other valuable consideration except periodical payments of money, being payments—

(a) calculated at not more than the prescribed rate per week; and

(b) made for not more than 4 weeks in advance,

20 act as a foster parent in relation to any child unless the child is being reared at the place where the father, mother or other guardian of the child has his or her home.

25 (2) Subsection (1) does not apply in respect of the person in charge of a non-Government children's home for the time being approved by order of the Minister for the purposes of this subsection or of a facility or in respect of any person exempted for the time being from the operation of this section by order of the Minister.

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(3) The Director shall, if requested to do so by any person wishing to place a child in a non-Government children's home or in the care of the holder of a fostering authority, accept from that person a sum of money from which he shall make such payments, not exceeding periodical payments
5 of money calculated in accordance with subsection (1) (a), as may be agreed upon to the person in charge of that home or the holder of the fostering authority, as the case may be.

Leaving children unsupervised in motor vehicles.

54. A person who leaves any child in his care in a motor vehicle without
10 proper supervision for such period or in such circumstances that the child becomes or is likely to become emotionally distressed or that his health is or is likely to be permanently or temporarily impaired is guilty of an offence.

Compulsory attendance at school.

55. (1) In this section, "school"—

- 15 (a) except in relation to a child referred to in paragraph (b), means a State school or a certified school or a school subsidised under the provisions of the Public Instruction Act of 1880 or the regulations made thereunder; and
- 20 (b) in relation to a child who is, by reason of any handicap, not capable of being educated by the ordinary methods of instruction, means a special school or a certified special school.

(2) Any person who has the care of a child between the age of 6 years and the school leaving age shall cause him to attend school regularly and on every half-day on which a school is open.

25 Penalty: \$200 for each half-day on which the child does not so attend school.

(3) Subsection (2) does not apply in respect of a child referred to in paragraph (b) of the definition of "school" in subsection (1) unless the child's place of residence is within the district prescribed in relation to a
30 school declared to be or established as a school for children suffering from the class of handicap from which the child is suffering.

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(4) An averment in an information for an offence under subsection (2) that a person was, when the offence is alleged to have been committed, a child of an age between the age of 6 years and the school leaving age shall be prima facie evidence of the fact alleged.

5 (5) It is a sufficient defence to a prosecution for an offence under subsection (2) alleged to have been committed on any date if, in relation to the child to whom the prosecution relates, the defendant—

10 (a) proves that, prior to that date, the child had been receiving regular and efficient instruction on at least 85 days in each half-year in his home or elsewhere;

(b) proves that the Minister had granted an exemption certificate under section 56 (1) in respect of the child and that the terms and conditions specified in the certificate were being complied with, and the certificate was in force, on that date;

15 (c) proves that, subject to subsection (6)—

(i) in relation to a child under the age of 11 years, there was not a school within 3 kilometres by the nearest practicable route of the place of residence of the child; or

20 (ii) in relation to a child of or above the age of 11 years, there was not a school within 5 kilometres by the nearest practicable route of the place of residence of the child;

25 (d) proves that the child was prevented from attending school by sickness, danger of infection or temporary or permanent incapacity and that within 7 days after the date on which the sickness, danger or incapacity occurred or arose the defendant gave or caused to be given notice thereof in writing to a teacher of the school which the child attended immediately before the date on which the sickness, danger or incapacity occurred;

30 (e) proves that the absence from school was by reason of the child's disobedience and was not due to any neglect or default of the defendant;

(f) proves that the child had not been absent for more than 6 half-days during the 3 months during which the school had been open immediately before that date; or

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(g) satisfies the court that the child did not attend school, as referred to in the information for the offence, for any reason which the court deems sufficient.

(6) Where the child to whom a prosecution for an offence under subsection (2) relates has been issued with or is entitled to a free pass to travel to and from school by any means of transport, the reference in subsection (5) (c) to 3 kilometres and 5 kilometres respectively does not include any distance which the child may travel on that free pass.

(7) For the purposes of subsection (2), a child shall be deemed to have attended school on a half-day if he attended the school for at least 2 hours on that half-day or for less than 2 hours on that half-day and was permitted by a teacher at the school to leave the school before he had attended school for 2 hours on that day.

(8) An officer may—

15 (a) during school hours—

(i) approach any child who is apparently between the age of 6 years and the school leaving age and is apparently not in attendance at school as required by subsection (2); and

20 (ii) request the child to furnish to the officer the name and address of the home of the child; and

(b) accompany the child to his home to verify the information given to the officer by the child.

Exemption from school attendance.

56. (1) The Minister may, by order, grant a certificate exempting a child 25 from attendance at school in such circumstances as he thinks fit.

(2) A certificate granted under subsection (1)—

(a) may be granted subject to such terms and conditions as may be specified in the certificate; and

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- (b) shall be in force for the period specified in the certificate and no longer.

Register of school attendances.

57. The proprietor or principal teacher of any certified school or certified
5 special school shall—

- (a) keep a register, in a form approved by the Minister, of the attendance of children at the school;
- (b) upon request, produce the register to an inspector of schools or an officer and permit him to inspect it and make extracts from it; and
- 10 (c) in accordance with any request made by the Minister, furnish to him a return, in a form approved by the Minister, relating to the absence of children from the school and any information concerning the attendance of children which the Minister considers necessary for the purpose of the administration of this Act.

15 Penalty: \$200.

Evidence of attendance at school.

58. In any proceedings under this Act, a certificate purporting to be under the hand of the principal teacher of a State school or special school, or the proprietor, headmaster or principal teacher of any other school, stating
20 that a child—

- (a) was or was not on any day specified in the certificate enrolled as a pupil at; or
- (b) did or did not on any day so specified, or did or did not during any period so specified occurring on any day so specified, attend,
25 the State school or special school of which he is the principal teacher or the other school of which he is the proprietor, headmaster or principal teacher, shall be admissible in evidence in any proceedings and be prima facie evidence of the matters stated in the certificate.

*Community Welfare.***Exemption from certain provisions of Divisions 2, 3, 4 and 5.**

59. (1) The Minister may, by notice served on a person, exempt the person, absolutely or subject to terms and conditions and to the extent specified in the notice, from the operation of section 61 (1) or (2), 62 (1) or (2), 63 (1), (2) or (3), 68 (1), (2), (3) or (4), 70 (1) or (3) or 72 (1).

(2) A person on whom a notice has been served pursuant to subsection (1) is exempted from the operation of any provision specified in the notice, but only while he does not contravene or fail to comply with any condition so specified to which the exemption is subject and only to the extent, if any, so specified.

Revocation of exemptions under section 59.

60. (1) If he intends to revoke an exemption given under section 59 (1), the Minister shall cause to be served on the person to whom the exemption was given a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to his satisfaction that the exemption should not be revoked.

(2) When 28 days have expired after a notice has been served on a person pursuant to subsection (1), the Minister may, after considering any submissions made to him during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

DIVISION 2.—*Licensed Child Care Services and Licensed Residential Child Care Centres.***Unlicensed persons not to provide child care services.**

61. (1) A person who provides or advertises himself or holds himself out as being willing to provide a child care service is guilty of an offence—

(a) unless he is the licensee under a licence for the child care service;

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(b) where he is the licensee under such a licence, unless the authorised supervisor under the licence has the overall supervision of the provision of the child care service to which the licence relates; or

5 (c) where he is the person having the overall supervision of the provision of the child care service provided by the licensee under such a licence, unless he is the authorised supervisor under that licence.

(2) A person, being the licensee or authorised supervisor under a licence for a child care service, is guilty of an offence if he contravenes or
10 fails to comply with any condition of the licence that applies to him.

(3) A person who wilfully publishes any advertisement with respect to any child care service which is not licensed is guilty of an offence.

(4) A person who is the authorised supervisor under a licence for a child care service but is not the licensee under the licence is not guilty of an
15 offence by reason of subsection (1) (a) in respect of any thing done by him in the course of his supervising the provision of the child care service to which the licence relates.

(5) A person is not guilty of an offence by reason of subsection (1) (a) in respect of any thing done by him in accordance with directions given
20 to him by the licensee under a licence for a child care service or by the authorised supervisor under such a licence if that thing is done by him in the course of his providing or assisting in providing the child care service to which the licence relates.

(6) A provision of this section does not, to the extent of the exemp-
25 tion, apply in respect of a person exempted from that provision under section 59.

Unauthorised persons not to conduct residential child care centres.

62. (1) A person who conducts or advertises himself or holds himself out as being willing to conduct a residential child care centre is guilty of an
30 offence unless the premises on which the centre is conducted are licensed premises and he is the licensed manager of the licensed premises.

Community Welfare.

(2) The licensed manager of licensed premises is guilty of an offence if he contravenes or fails to comply with any condition of the licence for the premises that applies to him.

(3) For the purposes of subsection (1), but without affecting the generality of that subsection, a person who is in charge of a residential child care centre shall be deemed to have the conduct of the centre.

(4) A provision of this section does not, to the extent of the exemption, apply in respect of a person exempted from that provision under section 59.

10 Unlicensed premises not to be used as residential child care centres.

63. (1) The proprietor of premises on which a residential child care centre is conducted is guilty of an offence if the premises are not licensed premises.

(2) The proprietor or, in the case of a licence granted as referred to in section 64 (3), the licensee of licensed premises is guilty of an offence if—

- (a) the premises do not comply with any condition of the licence for the premises that applies to the premises; or
- (b) he contravenes or fails to comply with any condition of the licence for the premises that applies to him.

(3) The licensee of a licensed premises shall produce the licence for the premises to an officer requesting him to do so.

Penalty: \$200.

(4) A provision of this section does not, to the extent of the exemption, apply in respect of a person exempted from that provision under section 59.

Community Welfare.

Licences to specify certain particulars.

64. (1) A licence for a child care service shall specify—

- (a) the person to whom it is granted;
- (b) the child care service to which it relates; and
- 5 (c) the person who is authorised by the licence to have the overall supervision of the provision of the child care service to which it relates.

(2) A licence for a residential child care centre shall specify—

- (a) the person to whom it is granted;
- 10 (b) the premises to which it relates;
- (c) the person who is authorised by the licence to have the conduct of a residential child care centre on those premises; and
- 15 (d) as a condition of the licence that applies to the licensed manager, that the licensed manager shall make an application under section 119 (1) (a) in respect of a child within 21 days before the expiration of 12 months after the child has commenced to reside in the residential child care centre and after the next previous application, if any, was made under section 119 (1) (a) in respect of the child.

20 **(3)** Notwithstanding subsection (1) (a) or (2) (a), a licence may specify that it is granted to an unincorporated association but, in any such case, the applicant for the licence shall be deemed, for the purposes of this Division, to be the person to whom the licence is granted, unless a further
25 written notice to the Minister of his appointment and of his full name and address, in which case, from the time the notice is received by the Minister, the further person so appointed shall be deemed, for the purposes of this Division, to be the person to whom the licence is granted.

30 **(4)** Schedule 3 applies to and in respect of a licence for a child care service and a licence for a residential child care centre and an applicant for, the licensee under, and an approved person (within the meaning of that Schedule) under, any such licence.

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Removal of children from unlicensed residential child care centres.

65. (1) Where—

- (a) a child resides at a residential child care centre conducted on licensed premises otherwise than by the licensed manager or conducted otherwise than on licensed premises;
- (b) an officer requests a parent of the child to remove the child from the residential child care centre; and
- (c) the child is not forthwith so removed,

the child shall be deemed to be a child in need of care within the meaning of Division 6 and, on application made to the Children's Court in accordance with the provisions of that Division, may be dealt with by the court in any manner in which the court may, under section 80 (1) (b) or (c), deal with a child who it is satisfied is in need of care.

(2) Subsection (1) does not apply in respect of a child who resides at a residential child care centre and who is related, as referred to in section 44 (2), to the person who has the care of him at that centre.

Termination of illegal child care services.

66. (1) Where a child care service is being provided for a child and an offence under section 61 (1) or (2) is being committed in relation to the child care service (whether or not a person has been proceeded against for the offence), any person responsible for the child shall, on the request of an officer, forthwith cause the child no longer to be provided with the service.

Penalty: \$500.

(2) Subsection (1) does not apply in respect of a child who is related, as referred to in section 44 (2), to the person by whom the offence under section 61 (1) or (2) is being committed.

Community Welfare.

Notification of deaths at licensed premises.

67. (1) If a child dies at licensed premises, the licensed manager of the premises shall forthwith give notice of the death to—

- 5 (a) a member of the police force at the police station nearest the licensed premises; and
- (b) the Director.

Penalty: \$500.

(2) Subsection (1) does not apply in respect of a child who is related, as referred to in section 44 (2), to the licensed manager of the licensed
10 premises concerned.

DIVISION 3.—Private Fostering Agencies.

Unauthorised private fostering agencies prohibited.

68. (1) A person (not being an authorised private fostering agency) who carries on private fostering services or advertises himself or holds himself
15 out as being willing to carry on private fostering services is guilty of an offence.

(2) An authorised private fostering agency is guilty of an offence unless the principal officer of the agency has the overall supervision of the private fostering services carried on by it.

20 (3) A person who has the overall supervision of the private fostering services carried on by an authorised private fostering agency is guilty of an offence unless he is the principal officer of the agency.

(4) A person, being an authorised private fostering agency or the principal officer of such an agency, is guilty of an offence if he contravenes or
25 fails to comply with any condition of the agency's fostering agency authority that applies to him.

(5) A provision of this section does not, to the extent of the exemption, apply in respect of a person exempted from that provision under section 59.

*Community Welfare.***Fostering agency authorities to specify certain particulars.**

69. (1) A fostering agency authority may be granted only to a non-Government organisation and shall specify—

- (a) the non-Government organisation to which it is granted; and
- 5 (b) the person who is authorised by the authority to have the overall supervision of the provision of the private fostering services carried on under the authority.

(2) Schedule 3 applies to and in respect of a fostering agency authority and an applicant for, the holder of, and an approved person
10 (within the meaning of that Schedule) under, any such authority.

DIVISION 4.—*Authorised Foster Parents.***Fostering prohibited except by holders of fostering authorities.**

70. (1) A person, not being the holder of a fostering authority, who (whether or not for fee, gain or reward) has in his care, for a period, or for
15 periods in the aggregate, exceeding 50 days in any period of 12 months, one or more children for the purpose of the fostering of the children is, upon the period of 50 days being exceeded, or the aggregate of the periods exceeding 50 days, as the case may be, being exceeded, guilty of an offence, unless the child was placed in the care of that person—

- 20 (a) by an authorised private fostering agency; or
- (b) by or with the written approval of the Director.

(2) Subsection (1) does not apply—

- (a) in respect of a person who, at any residential child care centre, acts as a foster parent to any children; or
- 25 (b) in respect of a child placed in the care of a person to whom the child is related, as referred to in section 44 (2).

Community Welfare.

(3) The holder of a fostering authority is guilty of an offence—

- 5 (a) where his fostering authority specifies the maximum number of children in any age group to whom it applies, if he acts as a foster parent to more children (except children who are related to him, as referred to in section 44 (2)), in any such age group than the maximum number of children in that age group so specified;
- 10 (b) where his fostering authority specifies the child or children to whom it applies, if he acts as a foster parent to any other children (except children who are related to him, as referred to in section 44 (2));
- 15 (c) where his fostering authority specifies a maximum period referred to in section 71 (1) (e), if he acts as a foster parent to any child (except children who are related to him, as referred to in section 44 (2)) for a period exceeding the maximum period applicable under section 71 (1) (e) in respect of that child; or
- (d) if he contravenes or fails to comply with any condition of the fostering authority.

(4) Subsections (1) and (3) do not, to the extent of the exemption, apply in respect of any person exempted from the operation of those
20 subsections under section 59.

Fostering authority to specify certain particulars.

71. (1) A fostering authority—

- 25 (a) shall specify the person to whom it is granted;
- (b) shall specify the maximum number (not exceeding 5) of children to whom it applies;
- (c) shall specify the maximum number of children in any age group to whom it applies;
- (d) may specify the child or children to whom it applies; and

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- (e) may specify the maximum period for which the person to whom it is granted may act as a foster parent in respect of—
- (i) any child or children; or
 - (ii) where it specifies the child or children to whom it applies, the child or any of the children so specified.

(2) Schedule 3 applies to and in respect of a fostering authority and an applicant for, and the holder of, any such authority.

*DIVISION 5.—Employment of Children.***Children not to be employed in certain cases unless licensed.**

- 10 **72. (1)** A person shall not—
- (a) employ a child who is not licensed under a children's employment licence;
 - (b) cause or procure such a child to be employed; or
 - (c) being a person having the care of such a child, consent to his
- 15 being employed or allow him to be employed,

for the purpose of his taking part in an entertainment or exhibition or his offering any thing for sale otherwise than in the course of street trading.

Penalty: \$1,000 or, where the child is employed for pornographic purposes, \$2,000 or imprisonment for 2 years, or both.

- 20 **(2)** Subsection (1) does not apply in respect of the employment of a child otherwise than for pornographic purposes—
- (a) where the child is employed for the purpose of an occasional entertainment the net proceeds of which are wholly applied for the benefit of a school or charitable object;
 - (b) where the child is of or above the age of 15 years; or
 - (c) where the Minister has granted an exemption in respect of that
- 25 employment, if the conditions, if any, subject to which the exemption was granted are complied with.

Community Welfare.

(3) For the purposes of subsections (1) and (2)—

5 (a) a child who takes part in an entertainment or exhibition carried on for profit or offers any thing for sale shall be deemed to be employed for the purpose of his so taking part or offering a thing for sale by the person conducting the entertainment or exhibition or who owns the thing offered for sale, notwithstanding that he is not an employee of that person or receives no consideration for his doing so; and

10 (b) a child is employed for pornographic purposes if, in the course of the employment, the child—

(i) is engaged in an activity of a sexual nature; or

(ii) is in the presence of another person who is so engaged.

Limitations on street trading by children.

73. A person shall not—

15 (a) employ a child under the age of 14 years in street trading;

(b) cause or procure such a child to be so employed; or

(c) being a person having the care of such a child, consent to his being so employed or allow him to be so employed.

Penalty: \$1,000.

20 **Children not to be used for begging, etc.**

74. (1) A person shall not cause or procure a child, or, being a person having the care of a child, allow the child, to be on any premises for the purpose of—

(a) begging or receiving alms; or

25 (b) inducing the giving of alms, whether by providing any entertainment or exhibition or otherwise.

Penalty: \$500.

Community Welfare.

(2) Proof that a child was on any premises for a purpose referred to in subsection (1) (a) or (b) and that a person having the care of the child allowed the child to be there is prima facie evidence that the person allowed the child to be there for that purpose.

5 (3) Proof that any person while providing any entertainment or exhibition or offering any thing for sale in a public place had with him a child who was not licensed under a children's employment licence is prima facie evidence that the child is in that place for the purpose of inducing the giving of alms.

10 **Entertainment and performances by children.**

75. (1) A person who causes or allows a child to take part in a public entertainment or exhibition or in preparing, training or rehearsing for such an entertainment or exhibition in the course of which the child is in danger of suffering death or injury is guilty of an offence.

15 (2) Where a child is employed—

(a) to take part in a public entertainment or exhibition and, by the nature of the entertainment or exhibition, the child is in danger of suffering death or injury; or

20 (b) to take part in preparing, training or rehearsing for such an entertainment or exhibition,

and an accident causing actual bodily harm occurs to the child, the employer of the child, whether a parent of the child or not, is guilty of an offence.

(3) Where the employer of a child referred to in subsection (2) is not a parent of the child, the court before which the employer is convicted
25 of the offence referred to in that subsection may award, as compensation for the bodily harm so caused, an amount not exceeding the prescribed amount to be paid by the employer to the child or to some person, named by the court, on behalf of the child.

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(4) The recovery of compensation awarded under subsection (3) does not affect any other remedy available to the child, but any compensation so awarded shall be taken into account in any other proceedings by or on behalf of the child for or in respect of the same bodily harm.

5 Licences to employ children for certain purposes.

76. (1) In this section, "child" does not include a child who has reached the school leaving age or who, although he has not reached that age, is the holder of a certificate of exemption, granted in respect of him under section 56 (1), exempting him from attendance at school for the purpose of enabling
10 him to take employment.

(2) The Minister may, on application made by or on behalf of a child, grant a licence authorising the child to be employed for the purpose of his taking part in any entertainment or exhibition or offering any thing for sale, being an entertainment, exhibition or thing specified or of a kind
15 specified in the licence.

(3) Subject to subsection (5), a licence shall be in force for such times, during such periods and subject to such conditions as are prescribed or as the Minister may impose.

(4) The times for which a licence is in force, the periods during
20 which it is in force and the conditions to which it is subject shall be endorsed on the licence.

(5) A licence shall not—

(a) be granted under subsection (2) unless the Minister is satisfied
25 that the child is fit to be employed and that proper provision has in the manner specified in the application been made to safeguard the health, welfare and education of the child; or

(b) authorise a child to be employed on any day between the hours of
10 p.m. and 6 a.m.

(6) A licence may, at any time, be varied or cancelled by the
30 Minister.

*Community Welfare.*DIVISION 6.—*Children in Need of Care.***Objects of Division.**

77. The objects of this Division are to ensure that children in need of care are provided with assistance and supportive services, the provision of 5 that assistance and those services being based on the premises that—

- (a) the welfare and interests of children are to be given paramount consideration;
- 10 (b) children are entitled to special protection and to opportunities and facilities to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;
- 15 (c) children, for the full and harmonious development of their personalities, need love and understanding and, towards that end, should, wherever possible, grow up in the care and under the responsibility of their parents, but if that is not possible, in an environment of affection and moral and material security: a child of tender years should not, except in exceptional circumstances, be separated from his parents;
- 20 (d) children should be protected against all forms of neglect, cruelty and exploitation;
- (e) responsibility for the welfare of children belongs primarily to their parents, but if it is not fulfilled, it devolves upon the community; and
- 25 (f) except in exceptional circumstances or pursuant to legal proceedings, there should be no interruption of parental rights contrary to the wishes of children and their parents.

Assessors to form part of Children's Court for purposes of this Division.

78. The Children's Court shall not exercise its functions under this Division unless it sits with an assessor, nominated by the senior member of 30 the court, who may advise the court on matters before it but may not adjudicate on any such matters.

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Establishment of panel of assessors.

79. (1) The Minister may, by order published in the Gazette, establish a panel of assessors consisting of persons having such qualifications in social work or experience in community welfare as the Minister considers qualify 5 them to act as assessors for the purposes of this Division.

(2) The Minister may, by order published in the Gazette, remove from the panel established under subsection (1) the name of any person and may add to that panel the name of any person having qualifications or experience referred to in that subsection.

10 (3) An assessor is entitled to receive such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

Children's Court's powers with respect to children in need of care.

80. (1) Where, under section 82 (1), an application is made to the 15 Children's Court with respect to a child, the court shall inquire into the matter and—

- (a) if it is satisfied that the child was not, at the relevant time referred to in subsection (2), in need of care, shall refuse to make an order under paragraph (b) or (c);
- 20 (b) if it is satisfied that the child was in need of care at that time, may, whether or not upon the giving—
 - (i) by a person responsible for the child of undertakings acceptable to the court with respect to the care of the child;
 - (ii) by the child of undertakings acceptable to the court with 25 respect to his conduct; or
 - (iii) of undertakings referred to in subparagraphs (i) and (ii), refuse to make an order under paragraph (c);

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(c) if it is satisfied that the child was in need of care at that time and that it is not appropriate to deal with him under paragraph (a) or (b)—

- 5 (i) where a suitable person is willing to have the custody of the child, may make an order placing him in the custody of that person (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii)) for such period expiring on or before the day on which the child attains the age of 18 years as the court thinks fit;
- 10 (ii) may make an order placing the child under the supervision of an officer (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii)) for such period expiring before or after the day on which the child attains the age of 18 years as the court thinks fit;
- 15 (iii) may make an order declaring the child to be a ward;
- 20 (iv) in the case of a child in respect of whom it makes an order under subparagraph (iii) and who it is satisfied is in need of care as referred to in section 44 (4) (e) and is seriously emotionally disturbed, may make an order placing him in a special facility for such period expiring on or before the day on which the child attains the age of 18 years, but not exceeding 12 months, as is specified in the order; or
- 25 (v) in the case of a child under the school leaving age applicable to him who it is satisfied has not been attending school regularly, may make an order requiring the child to reside at and attend a prescribed school for such period, not exceeding 12 months, as is specified in the order; or
- (d) where the court is satisfied that—
- 30 (i) the child is intellectually handicapped, within the meaning of Part XI, 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

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(ii) the interests of the child would be promoted if he were to become an intellectually handicapped person under guardianship,

5 make an order declaring the child to be an intellectually handicapped person under guardianship for the purposes of Part XI.

(2) A reference in subsection (1) to the relevant time, in relation to an application referred to in that subsection, is a reference to the time when the circumstances that gave rise to the application occurred or existed.

(3) A child shall not be placed in a special facility used for the care
10 of children placed in that facility pursuant to an order under subsection (1) (c) (iv) except pursuant to such an order.

(4) Undertakings referred to in subsection (1) (b) or (c) (i) or (ii) shall be in writing signed by the person giving them and shall be in force for such period (expiring on or before the day on which the child attains the age
15 of 18 years) as may be specified in the undertakings.

(5) The Children's Court may accept—

(a) a new undertaking in place of an undertaking referred to in subsection (1) (b) or (c) (i) or (ii); or

(b) a variation of an undertaking so referred to,

20 and, where it does so, the new undertaking or the undertaking as varied shall, for the purposes of this Act, be deemed to be an undertaking referred to in whichever subparagraph of subsection (1) (b) or in subsection (1) (c) (i) or (ii), as may be appropriate.

(6) Where the Children's Court makes an order under subsection
25 (1) (c) (i) or (ii), it shall cause a copy of the order to be forwarded to the Director.

(7) The Children's Court may, at any time, by order, terminate an order under subsection (1) (c) (i), (ii), (iv) or (v) and, where it terminates an order under subsection (1) (c) (i), may, if it thinks fit, make a further
30 order placing the child the subject of the terminated order in the custody of

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a suitable person (whether or not on the giving of undertakings referred to in subsection (1) (b) (i) or (ii)) willing to have the custody of the child for such period expiring on or before the day on which the child attains the age of 18 years as the court thinks fit.

5 **(8)** Where a child is brought before the Children's Court pursuant to section 91 (8) and it is proved that an undertaking referred to in subsection (1) (b) (i) or (ii) or (c) (i) or (ii) given in proceedings relating to the child has not been complied with or that a direction referred to in section 83 (2) (b) (ii) given to the child has not been obeyed, the court may
10 do any of the things referred to in subsection (1) (a), (b) or (c) with respect to the child that it could do if an application had been made to it under section 82 (1) with respect to the child and it were satisfied that the child was in need of care.

(9) Where—

- 15 (a) an order is made with respect to a child under subsection (1) (c) (i);
- (b) the person in whose custody the child is placed by the order is the principal officer of a private fostering agency; and
- 20 (c) no undertakings of the kind referred to in subsection (1) (b) (i) were given, on the making of the order, by that principal officer, that principal officer may place the child in the care of another person.

(10) Where an order is made with respect to a child by the Children's Court under subsection (1) (c) (iv), the child may be accommodated in such special facility as the Minister thinks fit.

25 **Restrictions on making orders under section 80 (1) (c).**

81. (1) An order shall not be made under section 80 (1) (c) (i), (ii), (iii) or (iv) with respect to a child who has attained the age of 16 years unless the court is satisfied that, by reason of his being intellectually handicapped within the meaning of Part XI, it is appropriate in the interests of the child
30 that he be treated, for the purpose of this Part, as if he were a child who had not attained that age.

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(2) An order shall not be made under section 80 (1) (c) (i), (iii), (iv) or (v) with respect to a child unless the court has obtained from the Director and taken into account an assessment report with respect to the child.

(3) An order shall not be made under section 80 (1) (c) (i), (ii), (iii), (iv) or (v) in respect of a child where the court is satisfied that the child is not, immediately before the application for the order ends, in need of care and that the fact that he is not in need of care is not due to his having been in the care of the Director.

(4) Where the court is of the opinion that the circumstances giving rise to an application made for the purposes of section 80 (1) involve a conflict of cultural factors, the court shall not make an order under section 80 (1) (c) unless it has—

(a) obtained from the Director a report on those factors prepared by a person who, in the opinion of the court, is competent to advise on those factors; and

(b) taken into account that report.

(5) Where the court is of the opinion that a child the subject of an application made for the purposes of section 80 (1) has been brought up substantially in accordance with the culture of a particular ethnic group or is regarded as belonging to a particular ethnic group, the court shall not, unless the child has expressed a wish to the contrary, make an order under section 80 (1) (c) (ii), (iii), (iv) or (v) unless it has taken into account the desirability and feasibility of making an order under section 80 (1) (c) (i) placing the child in the custody of a person belonging to that ethnic group.

Applications for purposes of section 80 (1).

82. (1) An application may be made for the purposes of section 80 (1) by an officer or by a member of the police force, but the Children's Court shall not make an order under that subsection upon an application by a member of the police force unless it is satisfied that subsection (2) has been complied with.

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(2) A member of the police force shall not make an application for the purposes of section 80 (1)—

- (a) unless all reasonable and practicable steps have been taken to notify the appropriate officer of the circumstances of the case; or
- 5 (b) if that appropriate officer, having been so notified, has requested that the application be not made by a member of the police force.

(3) For the purposes of subsection (2), the appropriate officer in relation to any case is an officer, or an officer of a class, specified in an order in force made by the Director and served on the Commissioner of
10 Police as the officer or class of officers who or which is appropriate in relation to that case or the class of case to which that case belongs.

Provisions relating to children subject to orders under section 80 (1) (c) (i) or (ii).

83. (1) Where a child is subject to an order made under section 80 (1) (c) (i), he and the premises in which he resides shall be subject to inspection
15 by officers or other persons appointed by the Minister for the purposes of this subsection.

(2) Where a child is subject to an order made under section 80 (1) (c) (ii)—

- 20 (a) he and the premises in which he resides shall be subject to inspection by officers or other persons appointed by the Minister for the purposes of this paragraph; and
- (b) he shall—
 - (i) accept the supervision of any officer authorised by the Minister for the purposes of this paragraph; and
 - 25 (ii) obey all reasonable directions of any such officer.

Orders relating to abandoned children.

84. (1) Where the Children's Court is satisfied, on an application made to it under subsection (2) with respect to a child, that the child has been residing in a non-Government children's home for a period of 12 months
30 or more and that there has been no substantial contact during that period

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between the child and any of his parents or any person in whose care he was immediately before he commenced residing in the non-Government children's home, the court may, if it considers it to be in the best interests of the child to do so, make any of the orders referred to in section 80
5 (1) (c).

(2) An application may be made for the purposes of subsection (1) by an officer or by the person in charge of the non-Government children's home concerned.

(3) The applicant for an order under subsection (1) with respect to
10 a child shall, as soon as practicable after the application is made, cause a copy of the application, on which is endorsed a notice specifying the time, date and place set down for the hearing of the application, to be served on the child, if he has attained the age of 10 years, and, if he is not the applicant, on the Director and the person in charge of the non-Government
15 children's home and on each of the following persons who can reasonably be located, namely, each of the parents of the child and any person in whose care the child was immediately before he commenced residing in the non-Government children's home.

(4) The applicant and every person on whom a copy of the applica-
20 tion is to be served in accordance with subsection (3) shall be a party to the application.

(5) Failure to serve a copy of the application in accordance with subsection (3) does not vitiate the decision of the Children's Court on the application.

25 Removal of children pending care proceedings.

85. (1) Where an application under section 82 (1) has been made with respect to a child, the Children's Court may make an order for the removal of the child from any premises, and any officer authorised by the Minister for the purposes of this section or any member of the police force may
30 execute the order.

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(2) An officer authorised by the Minister for the purposes of this section or any member of the police force may, without an order or other warrant, enter any premises on which he suspects on reasonable grounds there is a child in need of care by reason of his being in immediate danger of
5 abuse and remove any such child from the premises.

(3) An authorised officer or a member of the police force may, for the purposes of entering premises and removing a child pursuant to subsection (1) or (2), use all reasonable force.

Power of search and removal of children in need of care.

10 **86.** (1) Whenever it appears to any stipendiary magistrate, on the information on oath of any officer or member of the police force that there is reasonable cause to suspect that a child is a child in need of care, the stipendiary magistrate may issue a warrant authorising the officer or member of the police force named therein to search for the child and remove him to
15 and place him in the care of the Director.

(2) The stipendiary magistrate issuing the warrant may, by the same warrant, authorise the apprehension of any person accused of any offence in respect of the child.

(3) Any person authorised by warrant under this section to search
20 for any child, and to remove him to and place him in the care of the Director, may enter (if need be by force) any premises specified in the warrant, and may remove the child therefrom.

(4) A warrant issued under this section shall be addressed to and executed by the officer or member of the police force and, when executing the
25 warrant, he may be accompanied by—

(a) a medical practitioner; and

(b) the person giving the information if that person so desires, unless the stipendiary magistrate otherwise directs.

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(5) It shall not be necessary in any warrant issued under this section to name any particular child.

Attendance of witnesses and others.

87. In any proceedings under this Division with respect to a child, the Children's Court may require the attendance, at the place where the proceedings are being or are to be conducted, of the child and of any person responsible for the child.

Enforcement of undertakings.

88. (1) If—

- 10 (a) an undertaking referred to in section 80 (1) (b) (i) or (ii) or (c) (i) or (ii) given by or with respect to a child is not complied with;
- 15 (b) a child placed in the custody of a person under section 80 (1) (c) (i) ceases, without lawful authority, to be in that person's care; or
- (c) a direction referred to in section 83 (2) (b) (ii) given to a child is not obeyed,

the Children's Court may require the attendance of the child at a place and time determined by the court.

20 (2) If proceedings on an application under section 82 (1) or 84 (2) with respect to a child are adjourned and—

- (a) the child, having been required by the court, on the adjournment, to attend at the time and place to which the proceedings are adjourned, does not so attend; or

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(b) an undertaking referred to in section 91 (1) (a) (ii) or (iii) or (b) (ii) is not complied with during the period of the adjournment, the Children's Court may require the attendance of the child at a place and time determined by the court.

5 Application of provisions of Justices Act, 1902, to secure attendance of witnesses and others.

89. (1) The provisions of the Justices Act, 1902, relating to warrants and summonses for the attendance of witnesses in proceedings before justices for offences punishable on summary conviction apply to and in respect of
10 the attendance of witnesses in proceedings under this Division and of any person required under section 87 or 88 to attend at a place at which proceedings under this Division are being or are to be conducted in the same way as they apply to and in respect of the attendance of witnesses in proceedings for those offences.

15 (2) In any proceedings under this Division, a member of the Children's Court, not including an assessor, or a stipendiary magistrate exercising the jurisdiction of the Children's Court may, under the provisions of the Justices Act, 1902, referred to in subsection (1), issue a summons or warrant for the appearance or apprehension of a person to be examined as a
20 witness or to produce any document or writing of his own motion and without any of the matters referred to in section 61 of that Act having been made to appear to him or his being satisfied as to any such matters.

Care of children pending care proceedings.

90. Where an officer or member of the police force—

25 (a) under section 85 (1) or (2) or 86, removes a child from any premises; or

(b) apprehends a child in accordance with a warrant issued pursuant to any of the provisions of the Justices Act, 1902, referred to in section 89,

30 he shall forthwith place the child in the care of the Director to be kept, subject to section 91, by him at a place approved by the Minister for the purposes of this section.

*Community Welfare.***Rights of children while care proceedings are pending.**

91. (1) Upon the adjournment of proceedings on an application under section 82 (1) or 84 (2) with respect to a child, the Children's Court shall—

(a) where the child is not in the care of the Director—

- 5 (i) make no order referred to in subparagraph (ii), (iii) or (iv);
- (ii) make an order accepting such undertakings as the court thinks fit with respect to the care, during the adjournment, of the child given by a person responsible for the child;
- 10 (iii) make an order accepting such undertakings as the court thinks fit with respect to the conduct, during the adjournment, of the child given by the child; or
- (iv) make an order placing the child in the care of the Director; or

15 (b) where the child is in the care of the Director—

- (i) make an order discharging the child from the care of the Director unconditionally;
- (ii) make an order discharging the child from the care of the Director and accepting undertakings of the kind referred to in paragraph (a) (ii) or (iii); or
- 20 (iii) make an order that the child continue in the care of the Director.

(2) Undertakings referred to in subsection (1) (a) (ii) or (iii) or (b) (ii) shall be in writing signed by the person giving them and shall be in 25 force for the period of the adjournment.

(3) An order shall not be made under a provision of subsection (1), other than subsection (1) (b) (i), unless the Children's Court is satisfied that the exercise of its power under a previous provision of that subsection that is applicable to the case would not adequately protect the child 30 concerned.

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(4) Where a child is placed or continued in the care of the Director pursuant to subsection (1) (a) (iv) or (b) (iii) and an application for the child to be discharged from the Director's care is made to the Director by the child or by a person responsible for the child, the Director shall, as soon as is
5 reasonably practicable, refer the application to the Children's Court which, upon any such application, may do any of the things that, upon the adjournment of proceedings referred to in subsection (1), it may do under subsection (1) (b).

(5) Where a child has been removed from any premises under
10 section 85 (2) or 86 and placed in the care of the Director under section 90, the Director shall forthwith make an application under section 82 (1) with respect to the child.

(6) Where a child has been removed from any premises under section
85 (1) or (2) or 86 and placed in the care of the Director under section 90,
15 the Director may—

(a) forthwith discharge the child from his care—

- (i) without any undertakings being given as referred to in subparagraph (ii) or (iii);
- (ii) upon the giving by a person responsible for the child of
20 undertakings acceptable to the Director with respect to the care of the child; or
- (iii) upon the giving by the child of undertakings acceptable to the Director with respect to the conduct of the child; or

(b) keep the child in his care or, where a suitable person is willing to
25 have the care of the child, make an order placing the child in the care of that person, pending the hearing of the application under section 82 (1) made in respect of the child.

(7) Where a child is in the care of the Director or another person pursuant to subsection (6) (b), the Director may, notwithstanding that
30 paragraph, at any time before the hearing of the relevant application referred to in that paragraph commences, exercise any of the powers conferred on him by subsection (6) (a).

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(8) Where a child has been apprehended as referred to in section 90 (b) in accordance with a warrant issued pursuant to any of the provisions of the Justices Act, 1902, referred to in section 89 by reason of any requirement of the Children's Court made under section 87 or 88, and has been placed in the care of the Director, the Director shall, subject to any action taken by a justice under any of the provisions of the Justices Act, 1902, referred to in section 89, as soon as practicable cause the child to be brought before the Children's Court.

Criteria to be observed by Children's Court and Director.

10 92. In determining—

- (a) whether or not to exercise any of its functions under any of the provisions of section 91 (1), the Children's Court; or
- (b) whether or not to exercise any of his functions under section 91 (6) or (7), the Director,

15 shall have regard to and only to—

- (c) any wishes expressed by the child as to whether or not he wishes the function to be exercised;
- (d) any intention expressed by the child to refuse to return to the care of the person who had care of him before the application under section 82 (1) was made with respect to him or before he was placed in the care of the Director, as the case may be; and
- (e) whether or not the exercise by the Children's Court of a function referred to in section 91 (1) (b) (i) or (ii) or by the Director of a function referred to in section 91 (6) or (7) would be likely to adequately protect the child or to result in bodily injury to any other person.

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Duties of Children's Court and Director to give information to certain persons.

93. (1) Where the Children's Court makes an order referred to in section 91 (1) (a) (iv) or (b) (iii), it shall record its reasons for doing so and cause a copy to be served on every person responsible for the child who can reasonably be located.

(2) Where the Director does not discharge a child referred to in section 91 (6) from his care, he shall record his reasons for not doing so and cause a copy of that record to be served on every person responsible for the child who can reasonably be located.

10 **(3)** Where a child—

(a) is the subject of an application under section 82 (1); and

(b) is in the care of the Director under this Division,

the Director shall cause a document containing brief particulars of the laws under which an application may be made for the discharge of the child from the care of the Director to be served on the child (if, in the opinion of the Director, he is capable of reading and understanding the document) and on every person responsible for the child who can reasonably be located.

(4) Where a document is to be served on a person pursuant to subsection (3) and it appears to the Director that the person is not literate in the English language but is literate in another language, the document shall, as far as is reasonably practicable, be written in the other language.

(5) The Children's Court or the Director, as the case may require, shall cause a copy of any undertakings referred to in section 80 (1) (b) or (c) (i) or (ii) or 91 (1) (a) (ii) or (iii) or (b) (ii) to be served on the person giving them.

(6) Failure to comply with any provision of this section does not vitiate anything done under any other provision of this Act.

*Community Welfare.***Procedure before Children's Court under this Division.**

94. (1) Proceedings under this Division shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

5 (2) Proceedings under this Division are not criminal proceedings but any fact which would, in any such proceedings, tend to prove that a child is a child in need of care or that the Children's Court has jurisdiction to make an order with respect to him under section 80 (1) must be proved beyond reasonable doubt.

10 (3) In any proceedings under this Division the Children's Court, or a court hearing or determining an appeal from a decision of the Children's Court made under this Division, is not bound by the rules of evidence and may act upon any statement, document, information or matter that may, in its opinion, assist it in relation to the proceedings, whether or not the state-
15 ment, document, information or matter would be admissible in accordance with those rules.

(4) In any proceedings under this Division, a member of the Children's Court or a stipendiary magistrate exercising the jurisdiction of the Children's Court may examine and cross-examine any witness to such
20 extent as he thinks proper for the purpose of eliciting information relevant to the exercise of his powers under this Division.

(5) In any proceedings under this Division before the Children's Court, or a court hearing or determining an appeal from a decision of the Children's Court made under this Division, any person who, in the opinion
25 of the Children's Court or the appellate court, has a genuine concern for the welfare of the child to whom the proceedings relate, may, by leave of the Children's Court or the appellate court, as the case may be, appear in person in the proceedings or be represented thereat by barrister or solicitor, and may examine and cross-examine witnesses on matters relevant to the
30 proceedings.

*Community Welfare.***Admissibility of certain statements, etc.**

95. (1) In any proceedings under this Division, the Children's Court, when determining the admissibility in evidence of any statement, confession, admission or information made or given in a police station by the child to whom the proceedings relate shall not admit the statement, confession, admission or information in evidence unless—

(a) there was present at the place in the police station where, and throughout the period of time during which, it was made or given—

(i) a person responsible for the child;

10 (ii) in the case of any child, with the consent of a person responsible for the child or, in the case of a child who had, when it was made or given, attained the age of 16 years, with his consent—a person of or above the age of 18 years, not being a person responsible for the child or a member of the police force; or

15

(iii) a barrister or solicitor of the child's own choosing; or

(b) the court—

20 (i) is satisfied that there was a proper and sufficient reason for none of the persons referred to in paragraph (a) (i), (ii) or (iii) to have been present at the place in the police station where the statement, confession, admission or information was made or given throughout the period of time during which it was made or given; and

25 (ii) considers that, in the particular circumstances of the case, the statement, confession, admission or information should be admitted in evidence in those proceedings.

(2) Subsection (1) does not apply in respect of any particulars required to be given by or under any Act other than this Act or the Child Welfare Act, 1939.

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Service of application under section 82 (1).

96. (1) The applicant for an order under section 80 (1) with respect to a child shall, as soon as practicable after the application is made, cause a copy of the application, on which is endorsed a notice specifying the time, date and place set down for the hearing of the application, to be served on the child, if he has attained the age of 10 years, and on each person responsible for the child who can reasonably be located.

(2) The applicant and every person on whom a copy of the application is to be served in accordance with subsection (1) shall be a party to the application.

(3) Failure to serve a copy of the application in accordance with subsection (1) does not vitiate the decision of the Children's Court on the application.

Restrictions on adjournment of proceedings under this Division.

97. (1) The Children's Court shall not adjourn proceedings on an application under section 82 (1) or 84 (2) for more than 8 days on any one occasion if, on the adjournment, the court makes an order under section 91 (1) (a) (iv) or (b) (iii) with respect to the child to whom the application relates.

(2) Without limiting the operation of subsection (1), the Children's Court—

(a) shall not adjourn proceedings on an application under section 82 (1) or 84 (2) for a period, or for periods in the aggregate, exceeding 8 days except with the consent of the parties to the application (other than the applicant) given after they have received advice from a barrister or solicitor instructed to advise them on the question of the adjournment; and

(b) shall not adjourn any such proceedings for periods totalling more than 28 days.

*Community Welfare.***Adjournment by a justice.****98. (1) Where—**

- (a) an application has been made under section 82 (1) or 84 (2);
and
- 5 (b) the hearing of the application by the Children's Court has not commenced,

any justice, upon application being made by an officer or a person responsible for the child to whom the application relates, may, subject to subsections (2) and (3), exercise the powers of the Children's Court to adjourn the proceedings on the application and the powers of the Children's Court under section 91.

(2) Not more than 2 adjournments shall be granted under subsection (1) in respect of any one application.

(3) An adjournment under subsection (1) shall not, if, on the 15 adjournment, the justice makes an order under section 91 (1) (a) (iv) or (b) (iii), be granted—

- (a) in the case of the first such adjournment—for more than 3 days;
or
- 20 (b) in the case of the second such adjournment—for more than 2 days.

(4) Proceedings adjourned by a justice on a second occasion pursuant to powers conferred on him under subsection (1) shall be adjourned to the Children's Court sitting at a place specified by the justice where it appears to the justice the court will be sitting when the adjournment expires.

25 (5) The justice by whom a second adjournment referred to in subsection (1) is granted shall, forthwith after the adjournment, transmit to the registrar of the Children's Court to which the application is adjourned all documents and depositions in his possession relating to the application.

*Community Welfare.***Appointment of a guardian ad litem.**

99. The Children's Court before which proceedings under this Division with respect to a child are taken may appoint a person (including the solicitor, if any, acting on behalf of the child) to act as the guardian ad litem 5 for the child.

Temporary refuge.

100. (1) A child seeking refuge may place himself in the care of the Director.

(2) The Director shall discharge a child who is in his care under 10 subsection (1)—

- (a) subject to paragraphs (b) and (c), upon the expiration of the period of 72 hours after he has placed himself in the care of the Director;
- 15 (b) subject to paragraph (c), if before the expiration of that period the Minister authorises the Director to keep the child in his care for a further period, upon the expiration of the further period; or
- (c) if the child before the expiration of the period or further period referred to in paragraph (a) or (b) makes a request to an officer 20 that he be discharged from the Director's care, upon that request being made.

Separation of children in need of care from offenders.

101. The Director shall, as far as is practicable, accommodate any child placed in his care pursuant to this Division in a facility other than a facility for the accommodation of persons who have committed offences or are on 25 remand awaiting proceedings in respect of offences alleged to have been committed by them.

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Notification of injuries to children.

102. (1) In this section—

“child” means a child under the age of 16 years;

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

5 “prescribed person” means—

(a) a medical practitioner; or

(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 barrister or a solicitor 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, or is in danger of being, abused; or

15 (b) is a child in need of care within the meaning of this Part,

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.

20 **(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 abused shall—

25 (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) is guilty of an offence.

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(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
- 5 (b) if he is satisfied that the child in respect of whom he was notified may have been, or is in danger of being, abused or is a child in need of care, take such action as he believes appropriate, which may include reporting those matters to a member of the police force.

10 or (3)—
(6) Where a person notifies the Director pursuant to subsection (2)

- (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.

(7) The provisions of subsection (6) (d) and (e) do not apply in relation to—

- 30 (a) the admissibility in, or of, evidence of a notification made under subsection (2) or (3);

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- (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,
- 5 either—
- (d) in any proceedings before the Children's Court or a court hearing or determining an appeal from a decision of the Children's Court made under this Division before which the child to whom the notification relates is brought for the purposes of proceedings under
10 this Division; 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 any of his functions in pursuance of this Act.
- 15 **(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
- 20 (b) in answer to a charge or allegation made against him in proceedings referred to in subsection (6) (d).

Medical examination of reputedly injured children.

103. (1) In this section, "child" means a child under the age of 16 years.

(2) Where the Director or a member of the police force believes on
25 reasonable grounds (which may consist wholly or partly of information received by him) that a child has been abused, he may serve a prescribed notice—

- (a) naming or describing the child; and

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(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,

5 on the person (whether or not a parent of the child) who appears to him to have the care of the child for the time being.

(3) A person who fails to comply with the requirement contained in a notice served on him under subsection (2) is guilty of an offence unless it is proved that he did not have the care of the child at the time the notice
10 was served.

(4) Where a person fails to comply with the requirement contained in a notice served on him under subsection (2), an officer authorised by the Minister in that behalf or a member of the police force may present the child in respect of whom the notice was served, or cause the child to be presented,
15 to a medical practitioner at a hospital or another place for the purpose of the child's being medically examined.

(5) An officer or a member of the police force may, to enable him to exercise his powers under subsection (4)—

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

20 (b) enter (if need be by force) any premises but shall not enter any place occupied as a dwelling except under the authority of a warrant issued under section 104.

(6) Where a child is presented to a medical practitioner under subsection (2) or (4)—

25 (a) the medical practitioner may conduct, or cause to be conducted, such medical examination of the child as he thinks fit, including examination at a hospital or place that is not the hospital or place specified in the notice referred to in subsection (2) in respect of the child;

30 (b) the Director shall, for the period of 72 hours commencing with the time at which the child is presented to the medical practitioner, be deemed to be the guardian of the child for all purposes; and

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- (c) the medical practitioner or other person by whom any such medical examination has been carried out shall prepare a written report of the examination for transmission to the Director.

(7) No proceedings lie against an officer, medical practitioner, 5 member of the police force or person employed at any hospital or other place at which a child is examined 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 or assisting in carrying out the provisions of this section, if he has acted in good faith and with reasonable care.

10 (8) Where a medical practitioner or other person furnishes a report to the Director pursuant to subsection (6) (c)—

- (a) the furnishing of the report 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 15 standards of professional conduct; and
- (b) no liability for defamation is incurred by reason of the making of the report.

Power of search and removal of abused children.

20 **104. (1)** Whenever it appears to any stipendiary magistrate, on the information on oath of any officer or member of the police force that a person on whom a notice has been served under section 103 (2) has failed to comply with the requirement contained in the notice, the stipendiary magistrate may issue a warrant authorising the officer or member of the police force named therein to search for the child in respect of whom the 25 notice was served and remove him and present him to a medical practitioner under section 103 (4).

(2) Any person authorised by warrant under this section to search for any child, and to remove him and present him to a medical practitioner under section 103 (4), may enter (if need be by force) any premises 30 specified in the warrant, and may remove the child therefrom.

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(3) A warrant issued under this section shall be addressed to and executed by the officer or member of the police force or any person named therein and, when executing the warrant, he may be accompanied by a medical practitioner.

5 (4) It shall not be necessary in any warrant issued under this section to name any particular child.

Power of Supreme Court to discharge child from care.

105. (1) The Supreme Court may, at any time, make an order discharging a child who is in the care of the Director under this Part from the Director's care either subject to the giving of undertakings of the kind referred to in section 91 (1) (a) (ii) or (iii) or without any such undertakings being given.

15 (2) Where the Supreme Court makes an order under subsection (1) discharging a child from the Director's care subject to the giving of undertakings, the undertakings shall, for the purposes of section 88 (2) (b), be deemed to be undertakings referred to in section 91 (1) (a) (ii) or (iii).

(3) Nothing in this Division limits the jurisdiction of the Supreme Court with respect to the custody or guardianship of children.

Unlimited applications for discharge from care.

20 106. There is no limit to the number of applications that may be made for the purposes of section 91 (4) or 105 (1) for the discharge of a child from the care of the Director.

DIVISION 7.—Wards.**Administration of this Division.**

25 107. In the administration of this Division, the welfare and interests of children in respect of whom a declaration under section 108 may be made and of wards shall be given paramount consideration.

*Community Welfare.***Minister may in certain cases declare a child to be a ward.**

108. Subject to section 109, the Minister may declare a child to be a ward—

- 5 (a) where the child has attained the age of 16 years—on the application of the child; or
- (b) where the child is under the age of 16 years—
- 10 (i) on the application of a person responsible for the child or any other person who, in the opinion of the Minister, has a sufficient interest in the welfare of the child; or
- (ii) upon his being discharged from guardianship under Part XI.

Limitations on Minister's power to declare a child to be a ward.

109. (1) In this section—

“affected person” means—

- 15 (a) in relation to a child in respect of whom an application referred to in section 108 (a) has been made—any person responsible for the child;
- (b) in relation to a child in respect of whom an application referred to in section 108 (b) (i) has been made—the child and any person responsible for the child other than such a person who made or joined in the application; and
- 20 (c) in relation to a child under guardianship under Part XI—the child and any person responsible for the child;

25 “prescribed notice”, in relation to a child, means a notice containing statements to the effect that—

- (a) the Minister is considering making a declaration under section 108 declaring the child to be a ward;
- 30 (b) the Minister may not declare the child to be a ward until the expiration of a period of 21 days after service of the notice on each affected person;

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- 5 (c) the Minister will consider any submission made by any person who is an affected person in relation to the child and received by him within the period of 21 days immediately following service of the notice, as to whether he should declare the child to be a ward; and
- 10 (d) any person who is an affected person in relation to the child may appeal to the Community Welfare Appeals Tribunal against a declaration of the Minister that a child is a ward within the period of 21 days immediately following the making of the declaration or, with the leave of the Community Welfare Appeals Tribunal, within the period of 3 months immediately following the making of the declaration.
- 15 (2) The Minister shall not declare a child to be a ward until after the expiration of a period of 21 days after a prescribed notice in relation to the child has been served, subject to subsection (5), personally on each person who is an affected person in relation to the child (other than a child who, in the opinion of the Minister, is not capable of reading and understanding the notice or the legal effect of his becoming a ward).
- 20 (3) Where a prescribed notice is to be served on a person for the purposes of subsection (2) and it appears to the Minister that the person is not literate in the English language but is literate in another language, the notice shall, as far as is reasonably practicable, be written in the other language.
- 25 (4) The Minister shall, in deciding whether or not to declare a child to be a ward, consider any submission made by a person who is an affected person and received by him within the period of 21 days immediately following service on the affected person of a prescribed notice in relation to the child.
- 30 (5) Where a prescribed notice in relation to a child cannot reasonably be served personally on an affected person, the notice may be served on the affected person by any other specified means determined by the Children's Court on the application of the Director.

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Guardianship of wards.

110. (1) The Minister is the guardian of the person of a ward, and, subject to this Act, has the custody of a ward to the exclusion of any other person until—

- 5 (a) the ward attains the age of 18 years; or
 (b) the guardianship of the Minister is terminated by the Minister or by the Supreme Court in the exercise of its jurisdiction referred to in section 113,

whichever first occurs.

- 10 **(2)** Where the Minister terminates his guardianship of any child, being a ward, the child ceases to be a ward and the guardianship of the child shall be determined as if the child had never been a ward.

Functions of the Minister in relation to wards.

111. (1) The Minister—

- 15 (a) shall provide for the accommodation and maintenance of wards;
 (b) may make payments to foster parents of wards at such rates as may be prescribed;
 (c) may direct the removal of any ward from one place to another;
20 (d) may, on such terms and conditions as may be prescribed or as the Minister, in a particular case, determines, place any ward—
 (i) in the custody of a person in charge of a non-Government organisation; or
 (ii) for the purpose of his being fostered, in the custody of
25 who is willing to undertake the custody of the ward;
 (e) may, at any time, terminate the custody of a ward who has been placed in the custody of a person under paragraph (d);
 (f) may direct that any ward be restored to the custody of a parent of the ward or the custody of any other person; and
30 (g) may terminate his guardianship of any ward.

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(2) Payment to a foster parent in respect of a ward shall not continue after the ward has attained the school leaving age except—

- (a) for the purpose of securing education or vocational training on a full-time basis for the ward;
 - 5 (b) where the ward is an invalid or is otherwise incapacitated; or
 - (c) where the case possesses unusual features which, in the opinion of the Minister, call for special consideration,
- and where the Minister authorises the payment.

(3) A ward shall not be placed in, or transferred to, a remand
10 centre or a training centre unless he is under detention as an accused person or he is subject to a control order.

(4) In subsection (3), "accused person" has the meaning ascribed to that expression by the Bail Act, 1978.

Functions of the Minister in relation to former wards.

15 **112. (1)** The Minister may give to, or provide for, any person who ceased to be a ward by reason only of his attaining the age of 18 years—

- (a) such assistance as he was empowered to give the person while the person was a ward; and
 - (b) such other assistance (whether financial or otherwise),
- 20 as, in his opinion, is reasonable having regard to the circumstances, including his former guardianship of the person.

(2) For the purpose of securing education or vocational training on a full-time basis for any person who has ceased to be a ward, the Minister may, subject to such conditions and requirements as may be
25 prescribed and to such additional conditions and requirements as the Minister in any particular case thinks fit, from time to time and for periods not exceeding 6 months at any one time authorise the making of payments for such a purpose as if that person were a ward.

(3) Any payment continued under the provisions of subsection (2)
30 may, at the discretion of the Minister, be discontinued or varied.

*Community Welfare.***Jurisdiction of Supreme Court not affected.**

113. Nothing in this Division limits the jurisdiction of the Supreme Court with respect to the custody or guardianship of children.

Offences in respect of wards.

- 5 **114.** A person who, without lawful authority—
- (a) removes a ward from his proper custody;
 - (b) causes, procures, permits or counsels the removal of a ward from his proper custody or the absconding by the ward himself from his proper custody; or
 - 10 (c) knowing a ward to have been removed or to have absconded from his proper custody, conceals him or prevents him from returning to his proper custody,
- is guilty of an offence.

Wards illegally removed or absconding from proper custody.

- 15 **115.** Where any ward has absconded or been illegally removed from his proper custody, any officer authorised by the Minister for the purposes of this section or any member of the police force may with such force as may reasonably be necessary—
- (a) return the ward to his former custody; or
 - 20 (b) place the ward in such other custody as the Minister may direct.

Reciprocity between States and Territories.

116. (1) In this section—

“appropriate authority” means a person who under the law of—

- 25 (a) a State of the Commonwealth other than New South Wales; or

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(b) a Territory,

corresponding to this Act is competent to take action equivalent to the undertaking of guardianship of wards under this Act;

5 “interstate ward” means a child who has entered and is in New South Wales and who, immediately before his so entering, was under the guardianship of an appropriate authority;

“Territory” means Territory of the Commonwealth, including a Territory under the trusteeship of the Commonwealth.

(2) The Minister—

- 10 (a) may make financial and other arrangements with an appropriate authority for the care of an interstate ward or a ward;
- (b) may, at his discretion, or in accordance with any such arrangements, return an interstate ward to the care of the appropriate authority for the interstate ward; and
- 15 (c) shall, where the appropriate authority for an interstate ward requests him to do so, return the interstate ward to the care of that appropriate authority.

20 **(3)** The Minister shall provide for the accommodation and maintenance of an interstate ward to whom an arrangement referred to in subsection (2) applies as if the interstate ward were a ward.

(4) The Minister may, on the request of an appropriate authority, declare an interstate ward to be a ward under this Act and thereupon the interstate ward shall be deemed to have been declared to be a ward in accordance with the provisions of this Division.

25 **(5)** Where an interstate ward who was made a ward for a specified period is declared to be a ward under subsection (4), then, notwithstanding any other provision of this Division, he shall, if, upon the expiration of that period, he is a ward, cease to be a ward by virtue of that declaration.

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(6) Where, in the opinion of the Minister, the law of a State of the Commonwealth, other than New South Wales, or of a Territory, contains a provision corresponding to subsection (4) and, upon the request of the Minister, a ward is declared, under that provision, to be a ward for the purposes of the law of that other State or that Territory, the functions conferred or imposed by or under this Act upon the Minister and other persons shall be deemed to have been suspended in relation to that ward while he remains under guardianship in consequence of the declaration under that provision, except in so far as they may be exercised in accordance with arrangements made under subsection (2) (a).

DIVISION 8.—*Children's Boards of Review.***Interpretation: Pt. VII, Div. 8.**

117. In this Division—

15 "Board of Review" means a board of review established under Schedule 4;

"Panel" means the Children's Review Panel established pursuant to section 118;

"President" means the President of the Boards of Review.

Children's Review Panel.

20 118. (1) There shall be a Children's Review Panel.

(2) Schedule 4 applies to and in respect of the Panel and the members thereof.

Functions of a Children's Board of Review.

25 119. (1) An application for a review may be made to the President—
(a) by the licensed manager of a licensed residential child care centre, where the licence for the centre is subject to a condition requiring him to make the application;
(b) by a ward in respect of himself;

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- (c) by the father or mother or a foster parent of a ward in respect of the ward; or
- (d) by a visitor for a facility, in respect of a ward residing in that facility or by any other person in respect of a ward, where the person deems himself to have a sufficient interest in the welfare of the ward.

(2) The President—

- (a) may of his own motion request a Board of Review to carry out a review of a ward or of a child residing in a residential child care centre; and
- (b) shall, if he receives an application for a review under subsection (1), request a Board of Review to carry out the review.

(3) Notwithstanding subsection (2) (b), the President is not required to make a request, referred to in that paragraph, with respect to a ward in respect of whom an application was made by a person (not being a visitor) referred to in subsection (1) (d), unless the President considers the person to have a sufficient interest in the welfare of the ward.

(4) A Board of Review shall, when requested by the President to carry out a review of a ward or a child—

- (a) review the welfare, status, progress and circumstances of the ward or child; and
- (b) make a written report which shall—
- (i) inform the Minister as to the welfare, status, progress and circumstances of the ward or child; and
 - (ii) advise the Minister as to whether any change (and if so, what change) in the circumstances or status of the ward or child would, in its opinion, promote the welfare and interests of the ward or child.

(5) In the exercise of its functions under subsection (4) in relation to a review of a ward or a child, a Board of Review may inspect files, records or papers kept by the Department or by a licensed residential child care centre in respect of the ward or child and may hear or receive submissions from any person, including the ward or child.

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Copies of report.

120. Where a Board of Review has made, under section 119 (4), a report to the Minister relating to a ward or a child, the Board—

- 5 (a) shall give a copy of the report to the person, if any, who applied for the review of the ward or child; and
- 10 (b) may give a copy of the report to any person who it considers has a sufficient interest in the welfare of the ward or child (including the ward or child, if he is of or above the age of 10 years and the Board considers it in the best interests of the ward or child to give a copy of the report to him).

PART VIII.

CRIMINAL PROCEEDINGS INVOLVING CHILDREN.

DIVISION 1.—General.

Interpretation: Pt. VIII.

15 **121.** In this Part—

- (a) “Children’s Panel” means a Children’s Panel established pursuant to Schedule 5; and
- (b) a reference to a court is a reference to a court in New South Wales which exercises criminal jurisdiction.

20 **Age of criminal responsibility.**

122. It shall be conclusively presumed that no child under the age of 10 years can be guilty of an offence.

*Community Welfare.***Principles relating to exercise of criminal jurisdiction with respect to children.**

123. (1) A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles:—

- 5 (a) that children have rights and freedoms before the law governing criminal behaviour equal to those enjoyed by adults and, in particular, a right to be heard in and to participate in the processes that lead to decisions that affect them;
- 10 (b) that children who commit offences should bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance;
- (c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption;
- (d) that it is desirable, wherever possible, to allow a child to reside in his own home;
- 15 (e) that the penalty suffered by a child for an offence should be no greater than that suffered by an adult who commits an offence of the same kind.

(2) Subsection (1) has effect subject to any other provision of this Act.

20 Bringing of apprehended children before courts.

124. (1) A child apprehended as an offender and detained in custody shall, as soon as practicable after his apprehension, be brought before a court having jurisdiction to deal with the offence.

(2) Subject to Part X, an accused person, within the meaning of 25 the Bail Act, 1978, being a child, shall, if he is detained in custody for the offence in respect of which he is an accused person, be detained in a remand centre unless, in the case of a person who has attained the age of 16 years, the court in which the proceedings for that offence are pending certifies—

- 30 (a) that his character is such that he is not a fit person to be detained in a remand centre; or
- (b) that the charges are of such a serious nature that the person ought not to be detained in a remand centre.

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(3) The reference in subsection (1) or (2) to a child includes a reference to a person who has attained the age of 18 years but has not attained the age of 21 years and who is detained in custody in respect of an offence committed by him when he was under the age of 18 years.

5 (4) A child apprehended pursuant to a warrant for his attendance as a witness in any criminal proceedings shall, until he is discharged as a witness in the proceedings or otherwise released from custody, be detained in a remand centre.

Publicity of proceedings.

10 125. (1) In criminal proceedings in a court to which a child is a party—

(a) except as provided by paragraph (b), any persons not directly interested in the proceedings shall be excluded from the place where the proceedings are being heard; and

15 (b) any persons bona fide engaged in reporting or commenting upon the proceedings of the court for dissemination through a public news medium shall not be excluded from the place where the proceedings are being heard,

unless the court otherwise directs.

20 (2) A court, in criminal proceedings to which a child is a party, may direct any person, other than the child, to leave the place where the proceedings are being heard during the examination of any witness if the court is of the opinion that it is in the interest of the child that such a direction should be given.

25 (3) The powers exercisable by a court under subsection (2) may be exercised notwithstanding that the person to whom a direction under that subsection is given may be directly interested in the proceedings.

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Publication of names or identifying reports.**126. (1) The name of—**

(a) any child under the age of 16 years—

- 5 (i) who appears as a witness before a court in any criminal proceedings;
- (ii) who is involved in a hearing or trial by a court in any such proceedings; or
- (iii) to whom a hearing or trial by a court in any such proceedings relates; or

10 (b) any child of or above the age of 16 years who appears as a witness before a court in any such proceedings,

shall not be published or broadcast.

(2) The name of a child of or above the age of 16 years—

- 15 (a) who, in any criminal proceedings, is involved in a hearing or trial by a court; or
- (b) to whom a hearing or trial by a court in any such proceedings relates,

shall not, where persons not directly interested in the proceedings have been excluded from the hearing or trial, be published or broadcast unless the
20 court otherwise directs.

(3) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) or (2) is guilty of an offence.

**(4) A report (other than an official report) of the proceedings of a
25 court shall not include information which identifies or may lead to the identification of any child the publication or broadcasting of whose name is prohibited by subsection (1) or (2).**

(5) A person who publishes a report which contravenes subsection (4) is guilty of an offence.

*Community Welfare.***Assessment reports.**

127. A court, if satisfied that a person under the age of 21 years when charged before it with an offence has committed the offence and was under the age of 18 years when he did so, shall, before making a control order
5 in respect of the person or sentencing the person to imprisonment in respect of the offence, obtain and take into account an assessment report with respect to the person.

Admissibility of certain statements, etc.

128. (1) In this section, a reference to—

- 10 (a) a person acting judicially includes a reference to a person making a determination as to the admissibility of evidence in committal proceedings; and
- (b) proceedings is a reference to any proceedings in which a person is
15 alleged to have committed an offence while a child or which arise out of any other proceedings in which a person was alleged to have committed an offence while a child.

(2) A person acting judicially in any proceedings, when determining the admissibility in evidence of any statement, confession, admission or
20 information made or given in a police station by a person who, at the time of making or giving the statement, confession, admission or information, was a child shall not admit the statement, confession, admission or information in evidence unless—

- (a) there was present at the place in the police station where, and
25 throughout the period of time during which, it was made or given—
- (i) a person responsible for the child;
- (ii) in the case of any child, with the consent of a person responsible for the child or, in the case of a child who had, when it was made or given, attained the age of 16 years, with his consent—a person of or above the age of 18 years,
30 not being a person responsible for the child or a member of the police force; or

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(iii) a barrister or solicitor of the child's own choosing; or

(b) the person acting judicially—

5 (i) is satisfied that there was a proper and sufficient reason for none of the persons referred to in paragraph (a) (i), (ii) or (iii) to have been present at the place in the police station where the statement, confession, admission or information was made or given throughout the period of time during which it was made or given; and

10 (ii) considers that, in the particular circumstances of the case, the statement, confession, admission or information should be admitted in evidence in those proceedings.

(3) Subsection (2) does not apply in respect of any particulars required to be given by or under any Act other than this Act or the Child Welfare Act, 1939.

15 **DIVISION 2.—*Proceedings in relation to Particular Offences.***

Application: Pt. VIII, Div. 2.

129. This Division applies to and in respect of a person—

(a) who has attained the age of 18 years; and

20 (b) who committed or is alleged to have committed an offence at a time when he had not attained the age of 18 years,

in the same way as it applies to and in respect of a child if the person had not attained the age of 21 years when the charge, information or complaint in respect of the offence was made or laid.

Establishment of Children's Panel Council and Children's Panel.

25 **130. (1)** There shall be a Children's Panel Council.

(2) Schedule 5 applies in relation to the Children's Panel Council and a Children's Panel and the members thereof.

*Community Welfare.***Limitation on jurisdiction of courts in relation to children.**

131. (1) This section applies to any offence committed or alleged to have been committed by a child, except—

- 5 (a) the offence of homicide, an offence under section 61B of the Crimes Act, 1900, or the offence of attempting to commit an offence under that section;
- (b) offences punishable by death or penal servitude for life;
- (c) offences committed by persons subject to control;
- (d) contempt;
- 10 (e) offences under section 159 (1);
- (f) traffic offences in respect of which the Children's Court does not, by reason of section 188 (1), have jurisdiction; or
- (g) such offences as may be prescribed for the purpose of this sub-section.

15 **(2)** Subject to subsection (3), a court shall not hear, consider, dispose of or otherwise deal with in any way a charge against a child in respect of an offence to which this section applies unless—

- (a) a Children's Panel has determined under section 133 (1) that the court may do so; or
- 20 (b) the court is satisfied that the child has, after receiving advice in relation to the alternatives available to him from a barrister or solicitor acting for him, requested the Director in writing that no determination of a Children's Panel be made in respect of the offence.

25 **(3)** Subsection (2) shall not affect any power vested in a magistrate, justice or court to take any information or complaint, to issue any summons, to grant, issue or endorse any warrant, to grant bail or to adjourn the hearing of any indictment, information or complaint.

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Filing of report of criminal offence by a child.**132. Where—**

- (a) a child has been charged with an offence to which section 131 applies—a member of the police force; or
- 5 (b) an information has been laid or a complaint has been made against a child for such an offence—a member of the police force or, if a person other than a member of the police force laid the information or made the complaint, that other person,

shall forthwith file at the prescribed place, for reference to a Children's
10 Panel, a report, specifying details of the charge, information or complaint, that the child has been so charged or that an information has been laid or a complaint has been made against the child.

Determinations of a Children's Panel.

133. (1) A Children's Panel shall, within the period of 28 days immediately following the reference of a report in respect of a child or the
15 remission of a case to it in accordance with section 173, but, in the case of a child in custody, as soon as practicable, make a determination as to whether or not the offence to which the report relates is an offence to which section 131 applies and, if so, as to whether or not, having regard to the
20 public interest, the child should be dealt with for the offence to which the report or case relates and any such determination shall, subject to this Act, be final.

(2) Where a Children's Panel has determined that a child should not be dealt with for an offence, it shall—

- 25 (a) determine that no further action should be taken against the child in respect of the offence; or
- (b) request the Commissioner of Police to administer a police caution to the child in respect of the offence.

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(3) A determination of a Children's Panel that a child should not be dealt with for an offence shall operate to dismiss the charge for the offence and—

- 5 (a) if the child is in custody in respect of the offence—to release the child from that custody; and
- (b) if the child is at liberty on bail in respect of the offence—to discharge any bail undertaking in so far as it relates to the offence.

(4) Where a Children's Panel has not, within the period of 28 days immediately following the reference of a report in respect of a child or
10 the remission of a case to it in accordance with section 173, made a determination in accordance with subsection (1) as to whether or not the child should be dealt with for the offence to which the report or case relates, a determination shall be deemed to have been made by the Children's Panel that the child should not be dealt with for that offence and that no further
15 action should be taken against the child in respect of that offence.

(5) To assist it in making its determination as referred to in subsection (1), in respect of a child, a Children's Panel may—

- 20 (a) inspect any files, records or papers kept by the Department or by the Commissioner of Police in relation to the child and copies of any documents or depositions delivered to it under section 173 (3); and
- (b) consider any recommendations or proposals made at a conference convened in accordance with subsection (6).

(6) A Children's Panel may, when a report in respect of a child
25 is referred to it or a case is remitted to it in accordance with section 173—

- (a) nominate an officer and such of the following persons as it considers suitable to be participants in a conference:—
- 30 (i) persons responsible for the child;
- (ii) relatives of the child;
- (iii) teachers of the child;
- (iv) other persons who are closely associated with the child or who are familiar with the details of the alleged offence; and

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(b) request the officer nominated under paragraph (a)—

- (i) to convene a conference of all the persons so nominated; and
- (ii) to report to the Children's Panel any recommendations or proposals made at the conference.

5

(7) Where a Children's Panel takes action under subsection (6) in respect of a child alleged to have committed an offence and the child is in custody in respect of the offence, the child shall be released from that custody.

10 (8) Any admission of guilt by a child shall not in any way limit or affect a determination by a Children's Panel under subsection (1).

(9) Nothing in this section shall derogate from the discretion of any person to decide at any time not to proceed with the prosecution of a child.

15 **Reference of report, etc., not to be admissible in evidence.**

134. Neither—

20 (a) the reference to a Children's Panel of a report in respect of a child or the administering of a police caution (whether or not pursuant to a request referred to in section 133 (2) (b)) to a child in respect of any offence; nor

(b) any statement made at a conference referred to in section 133 (6), is admissible in evidence in any court, whether at the hearing of any charge or in relation to the making of an order upon a finding of guilt or sentencing upon any conviction.

25 **Civil liability not affected.**

135. Nothing in this Division shall affect any civil right or remedy which a person may have arising from an act or omission by a child.

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DIVISION 3.—Sentencing for Indictable Offences.

Application: Pt. VIII, Div. 3.

136. This Division applies to a person—

- 5 (a) who has pleaded guilty to, or has been found guilty or convicted of, an indictable offence in or by a court, other than the Children's Court; and
- (b) who was a child when the offence was committed and had not attained the age of 21 years when he was charged before the court with the offence.

10 Homicide and other serious offences.

137. (1) In relation to homicide, an offence punishable by death or penal servitude for life, an offence under section 61B of the Crimes Act, 1900, or the offence or attempting to commit an offence under that section a court shall, subject to subsection (2), sentence a person to whom this Division
15 applies according to law.

(2) Where, but for this subsection, a person to whom this Division applies would be liable to have pronounced on or recorded against him sentence of death, a court shall not pronounce on or record against him that sentence but shall sentence him—

- 20 (a) to penal servitude for life; or
- (b) in accordance with section 442 (1) of the Crimes Act, 1900, as if he were, by any section of that Act, an offender made liable to penal servitude for life.

Other indictable offences.

25 **138.** In relation to an indictable offence, other than an indictable offence to which section 137 applies, a court before which a person to whom this Division applies may—

- 30 (a) deal with the person according to law and, where the court sentences the person to imprisonment, direct that any period of imprisonment specified in the sentence be served in a training centre; or

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- (b) exercise in respect of the person any of the powers of the Children's Court under Division 6 of Part IX.

DIVISION 4.—Children's Community Service Orders.

Application: Pt. VIII, Div. 4.

5 **139.** This Division applies to a person—

(a) who has pleaded guilty to, or has been found guilty of, an offence;
and

10 (b) who was a child when the offence was committed and had not, when he was charged with the offence, attained the age of 21 years.

Interpretation: Pt. VIII, Div. 4.

140. (1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires—

15 “assigned officer”, in relation to a children's community service order, means the officer or other person for the time being assigned, under section 150, by the Director in respect of the administration of the order;

“children's community service order” means an order made under section 141 (1);

20 “community service work” means unpaid work approved by the Minister or unpaid work of a class or description so approved;

“imprisonment” includes penal servitude;

25 “supervisor” means a person appointed pursuant to the regulations to supervise the performance of community service work by persons in respect of whom children's community service orders are in force;

“work” includes any form of work, service or activity.

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(2) In this Division, a reference to—

- (a) a finding of guilt includes a reference to a conviction; or
- (b) an order made upon a finding of guilt includes a reference to a sentence.

5 Children's community service orders.

141. (1) A court, in dealing with or sentencing a person to whom this Division applies, may, where it could—

- (a) make an order for the imprisonment of the person; or
- (b) make a control order in respect of the person,

10 instead of making the order referred to in paragraph (a) or (b), make an order requiring the person to perform community service work for a number of hours not exceeding the number of hours prescribed in respect of the class of offences to which the offence belongs.

(2) The power of a court under subsection (1) may be exercised
15 only subject to and in accordance with this Division.

(3) Where a court, in respect of a person found guilty of an offence, makes a children's community service order in respect of the offence, the court may, in addition, do any one or more of the following:—

- (a) impose a fine;
- 20 (b) in the case of—
 - (i) the Children's Court—where the person found guilty of the offence has attained the age of 16 years, make an order referred to in section 202 (2) in respect of the offence;
or
 - 25 (ii) a court other than the Children's Court—make, pursuant to section 84A of the Justices Act, 1902, or section 138 (b), an order referred to in section 202 (2) in respect of the offence, or give or make a direction or an order under section 437 (1), 438 (1) or 554 (3) of the Crimes Act,
30 1900, in respect of the offence;

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(c) impose any disqualification authorised under any law on the person in respect of the offence;

(d) order the forfeiture of any property authorised under any law to be forfeited in respect of the offence.

5 (4) More than one children's community service order may be made by one or more courts in respect of the same person so as to be in force at the same time.

(5) This section applies to a person who has been found guilty of an offence before the date of commencement of this section but in respect of
10 whom no order has been made, before that date, upon the finding of guilt.

Children's community service order not to be made in addition to certain other orders, etc.

142. Where, in respect of a person found guilty of an offence—

15 (a) the Children's Court requires the person to enter into a recognizance under section 192 (b) (i) or exercises its powers under section 195; or

(b) a court, other than the Children's Court, gives or makes a direction or an order under section 554 (2), 556A (1) or 558 (1) of the Crimes Act, 1900, in respect of the offence,

20 it shall not, in addition, make a children's community service order in respect of the offence.

Circumstances in which a children's community service order may be made.

143. A court shall not make a children's community service order in respect of a person unless the person consents to the making of the order and
25 the court—

30 (a) has been notified, in person or by writing, by an officer or a person authorised in accordance with the regulations that arrangements exist for persons who reside in the area in which the firstmentioned person resides or intends to reside to perform community service work under such an order; and

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(b) is satisfied, after considering a report from an officer or a person so authorised about the firstmentioned person and his circumstances, and, if the court thinks necessary, hearing evidence from an officer or a person so authorised—

- 5 (i) that the firstmentioned person is a suitable person to perform community service work under such an order; and
- (ii) that, if such an order is made, community service work can be provided for the firstmentioned person under the arrangements referred to in paragraph (a).

10 Number of hours of community service work.

144. (1) Where a court makes a children's community service order, the court shall specify in the order the number of hours, not exceeding 100 hours, of community service work to be performed by the person in respect of whom the order is made.

15 **(2)** A court may specify that the hours of community service work to be performed by a person in respect of whom a children's community service order is made shall be concurrent with or additional to those specified in any other such order made in respect of that person, but so that the sum of—

- 20 (a) the number of hours of work remaining to be performed, at any time, concurrently under the orders; and
- (b) the number of hours of work remaining to be performed, at any time, otherwise than concurrently, under the orders,
- does not exceed 100 hours.

25 Supervising court.

145. The Children's Court shall be the supervising court in respect of a children's community service order, whether or not the order was made by that court.

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Place, etc., and time for presentation for work.

146. Where a court makes a children's community service order, it shall specify in the order—

- 5 (a) a place at which or a person to whom the person in respect of whom the order is made shall present himself, in person, for the purpose of enabling the administration of the order to be commenced;
- (b) a period within which the person in respect of whom the order is made shall so present himself; and
- 10 (c) the area within which the person in respect of whom the order is made shall perform community service work.

Conditions.

147. Where a court makes a children's community service order, it may specify in the order conditions, not inconsistent with this Division or the 15 regulations, to be complied with by the person in respect of whom the order is made during such period as the order remains in force.

Explanation of nature and effect of proposed order.

148. Where a court proposes to make a children's community service order, it shall, before making the order, explain or cause to be explained 20 to the person in respect of whom it is proposed to make the order, in language likely to be readily understood by him—

- (a) the purpose and effect of the proposed order;
- 25 (b) the consequences that may follow if he fails to comply with the proposed order or any requirement made by or under this Division or the regulations in respect of the proposed order; and
- (c) that the proposed order may be amended or revoked.

Preparation and service of a copy of an order.

149. (1) A court which makes a children's community service order shall, as soon as practicable after the order is made, cause the order to be 30 reduced to writing in the prescribed form.

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(2) The court shall cause a copy of a children's community service order reduced to writing under subsection (1)—

- (a) to be served on the person in respect of whom the order is made before he leaves the precincts of the court;
- 5 (b) to be sent to the Director; and
- (c) where that court is a court other than the Children's Court, to be sent to the registrar of the Children's Court together with such documents and information relating to the person in respect of whom the order is made as it considers likely to be of assistance
- 10 to the Children's Court.

(3) The failure of a court to cause a copy of a children's community service order to be served on or sent to a person pursuant to subsection (2) does not invalidate the order.

Assignment of officer by the Director.

15 **150.** (1) On receipt of a copy of a children's community service order sent to him under section 149 (2), the Director shall assign an officer or, where the regulations so provide, a person other than an officer, in respect of the administration of the order.

20 (2) The Director may, from time to time, assign another officer or another person who may be assigned under subsection (1) in place of the officer or person previously assigned.

Obligations of persons in respect of whom orders are in force.

151. A person in respect of whom a children's community service order is in force shall, in addition to complying with any other requirement made

25 by or under this Division or the regulations in respect of the order—

- (a) perform, for the number of hours specified in the order, such community service work as the assigned officer directs at such times as the assigned officer directs;
- (b) perform that work in a satisfactory manner;

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- (c) while performing that work, comply with any reasonable direction of the assigned officer or a supervisor; and
- (d) inform the assigned officer of any change in his place of residence.

Directions.

5 **152. (1)** The assigned officer shall not, under section 151, direct a person in respect of whom a children's community service order is in force to perform work of a kind usually performed for fee or reward on a regular basis.

10 **(2)** In giving directions to a person under section 151, the assigned officer and a supervisor shall, so far as practicable, avoid—

- (a) any conflict with the person's religious beliefs, if any; and
- (b) any interference with the times, if any, at which the person normally works or attends a school or other educational establishment.

15 Duration of children's community service order.

153. A children's community service order shall remain in force until—

- 20 (a) the person in respect of whom the order is made has performed community service work in accordance with any requirement made by or under this Division or the regulations in respect of the order for the number of hours specified in the order;
- (b) the expiration of a period of 12 months commencing on the date on which the order was made or, where that period is extended pursuant to section 154, the expiration of that period as so extended; or
- 25 (c) the order is revoked pursuant to section 155, 156 or 161, whichever first occurs.

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Amendment of children's community service order.

15 **154. (1)** Where, on the application of the person in respect of whom a children's community service order is in force or the assigned officer, it appears to the Children's Court that it would, having regard to circumstances that have arisen since the order was made, be in the interests of justice to do so, the court may extend the period during which the order remains in force.

10 **(2)** Where, on the application of the person in respect of whom a children's community service order is in force or the assigned officer, the Children's Court is satisfied that the person has changed or proposes to change his place of residence or that other sufficient reasons exist, the court may amend the order by substituting for the area specified in the order within which the person shall perform community service work another area.

15 **(3)** The Children's Court shall not make an order under subsection (2) unless the court—

- 20 (a) has been notified, in person or by writing, by the assigned officer that arrangements exist for persons who reside in the area in which the person in respect of whom the children's community service order is in force resides or intends to reside to perform community service work under a children's community service order; and
- (b) is satisfied that, if an order under subsection (2) is made, community service work can be provided for the person under the arrangements referred to in paragraph (a).

Revocation, etc., of children's community service orders on application.

25 **155. (1)** Where, on the application of the person in respect of whom a children's community service order is in force or the assigned officer, it appears to the Children's Court that it would, having regard to circumstances that have arisen since the order was made, be in the interests of justice to do so, the court may—

- 30 (a) where the order was made by the Children's Court—
- (i) revoke the order; or

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- (ii) revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court if the order had not been made; or
- 5 (b) where the order was made by a court of petty sessions, the District Court or the Supreme Court, subject to the Bail Act, 1978, commit the person to custody until he can appear or be brought before the court that made the order, whether or not that court is constituted by the same person as the court that made the order.
- 10 (2) Where, pursuant to subsection (1) (b), a person appears or is brought before a court that made a children's community service order in respect of him, that court may—
- (a) revoke the order; or
- 15 (b) revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by that court if it had not made the order.

Revocation of children's community service order on being dealt with for other offence.

- 20 **156. (1)** Where a person in respect of whom a children's community service order is in force appears before a court, being the same court as, or a court of higher jurisdiction than, the court that made the order, to be dealt with in respect of an offence other than the offence in respect of which the order was made, that court may—
- 25 (a) revoke the order; or
- (b) revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court that made the order if the order had not been made.
- 30 (2) For the purposes of subsection (1), the Children's Court and a court of petty sessions shall be the same as each other.

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Issue of summons or warrant—applications under section 154 or 155.

157. (1) Where an application is made to the Children's Court under section 154 or 155 by the assigned officer, the court may issue a summons requiring the person in respect of whom a children's community service order is in force to appear before it at the time specified in the summons and, if the person does not appear in answer to the summons, may issue a warrant for the arrest of the person directing that he be brought before the court as soon as possible after his arrest.

(2) Where a warrant has been issued under subsection (1), any member of the police force or any officer authorised by the Minister for the purposes of this section may, although the warrant is not at the time in his possession, arrest the person to whom the warrant relates.

Notification of amendment or revocation of orders.

158. Where a court—

- 15 (a) pursuant to section 154 (1), extends the period during which a children's community service order remains in force;
- (b) pursuant to section 154 (2), amends a children's community service order; or
- 20 (c) pursuant to section 155, 156 or 161, revokes a children's community service order,

the court shall cause notice of the extension, amendment or revocation to be served on the Director and the assigned officer and (if that court is a court other than the Children's Court) to be sent to the registrar of the Children's Court.

25 Breach of requirements of, or relating to, children's community service order.

159. (1) If a person in respect of whom a children's community service order is in force fails, without reasonable cause or excuse, to comply with the order or with any requirement made by or under this Division or the regulations in respect of the order, he shall be guilty of an offence.

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(2) Proceedings for an offence under subsection (1) in respect of a children's community service order shall be brought in accordance with section 160.

(3) Notwithstanding section 56 (1) of the Justices Act, 1902, proceedings for an offence under subsection (1) in respect of a children's community service order shall not be commenced at any time later than one month after the order ceased to be in force.

Issue of summons or warrant—failure to comply with order, etc.

160. (1) If it appears on complaint in writing to a justice that a person in respect of whom a children's community service order is in force has failed, without reasonable cause or excuse, to comply with the order or with any requirement made by or under this Division or the regulations in respect of the order, the justice may issue a summons requiring the person to appear before the Children's Court at the time specified in the summons or may, if the complaint is in writing and on oath, issue a warrant for the arrest of the person and directing that he be brought before the Children's Court as soon as possible after his arrest.

(2) Where a warrant has been issued under subsection (1), any member of the police force or any officer authorised by the Minister for the purposes of this section may, although the warrant is not at the time in his possession, arrest the person to whom the warrant relates.

Breach—how dealt with.

161. (1) If the Children's Court finds a person guilty of an offence under section 159 (1), the court may—

- 25 (a) without prejudice to the continuation in force of the children's community service order, impose on the person a fine not exceeding \$250;
- 30 (b) where the order was made by the Children's Court, revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court if the order had not been made;

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(c) where the order was made by a court of petty sessions, the District Court or the Supreme Court, subject to the Bail Act, 1978, commit the person to custody until he can appear or be brought before the court that made the order, whether or not that court is constituted by the same person as the court that made the order;

5 or

(d) take no action.

(2) Where, pursuant to subsection (1) (c), a person is to appear or is to be brought before the court that made the children's community service order in respect of him, the Children's Court shall send to the court before which the person is to appear or is to be brought a certificate of conviction of an offence under section 159 (1), being a certificate signed by the senior member or a member of the Children's Court or a stipendiary magistrate referred to in section 177 (1) (b), together with such documents and information as the Children's Court considers likely to be of assistance to the court before which the person is to appear or is to be brought.

10

15

(3) A certificate under subsection (2) shall be admissible as evidence of an offence under section 159 (1) in proceedings before the court before which a person appears or is brought pursuant to subsection (1) (c).

20

(4) Where, pursuant to subsection (1) (c), a person appears or is brought before the court that made the children's community service order in respect of him, that court may, if it is satisfied that the person is guilty of an offence under section 159 (1)—

25 (a) without prejudice to the continuation in force of the order, impose on the person a fine not exceeding \$250;

(b) revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by that court if the order had not been made; or

30

(c) take no action.

(5) In proceedings before the District Court or the Supreme Court under this section, any question whether a person has failed to comply with a requirement of a children's community service order, or with a requirement made by or under this Division or the regulations in respect of the order, shall be determined by the judge and not by the verdict of a jury.

30

*Community Welfare.***Subsequent dealing—order to be taken into account.**

162. (1) Where a person in respect of whom a children's community service order is made is subsequently dealt with by a court for the offence in respect of which the order was made, the court, in so dealing with the person, shall take into account—

- (a) that the order was made; and
- (b) any thing done under the order.

(2) Where a person in respect of whom a children's community service order is made is subsequently dealt with by a court for the offence in respect of which the order was made, the person shall be deemed to have a right of appeal against the manner in which he is dealt with—

- (a) where the court is the Children's Court or a court of petty sessions—under section 122 (1) of the Justices Act, 1902, as if he were a person who, for an offence, has, by the conviction of a justice or justices founded on an Act, been adjudged to be punished; or
- (b) where the court is the District Court or the Supreme Court—under section 5 (1) (other than paragraph (a) or (b)) of the Criminal Appeal Act, 1912, as if—
 - (i) he were a person convicted on indictment; and
 - (ii) the manner in which he is dealt with were a sentence passed on his conviction.

Custody on arrest.

163. Where a person is arrested under section 157, he shall, subject to the Bail Act, 1978, be detained in a remand centre.

DIVISION 5.—Remission of Cases for Imposition of Penalties.**Remission of cases to the Children's Court.**

164. (1) A court, other than the Children's Court or any other court of summary jurisdiction, by or before which a person who has not attained the age of 21 years is found guilty of an indictable offence, not being homicide, an offence punishable by death or penal servitude for life, an offence under

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section 61B of the Crimes Act, 1900, or the offence of attempting to commit an offence under that section, which he committed when a child, may, if it thinks fit, remit the case to the Children's Court.

(2) A court by which an order remitting a case to the Children's
5 Court is made under subsection (1)—

(a) may, subject to the Bail Act, 1978, commit the offender to custody until he can be brought before the Children's Court; and

(b) shall cause to be transmitted to the registrar of the Children's Court a certificate—

10 (i) setting out the nature of the offence; and

(ii) stating that the offender has been found guilty of the offence and that the case has been remitted for the purpose of its being dealt with under this Division.

(3) The Children's Court may deal with a person whose case has
15 been remitted to it under subsection (1) in any way in which it might have dealt with him if he had been tried and found guilty of the offence by that court.

Rights of appeal.

165. (1) No appeal shall lie against an order of remission made under
20 section 164 (1).

(2) Nothing in this Division affects any right of appeal against the verdict or finding on which an order of remission made under section 164 (1) is founded and a person dissatisfied with the order of the Children's Court in respect of a case remitted to it under section 164 (1) may appeal against
25 the order of the Children's Court pursuant to section 122 of the Justices Act, 1902, as if he had been tried and found guilty by the Children's Court.

DIVISION 6.—*Mistake in Exercise of Jurisdiction.***Section 122 not affected.**

166. Nothing in this Division affects section 122.

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Validation of certain findings, etc.

167. (1) A finding, order, determination, judgment or other decision of a court in relation to a person charged with an offence shall not be invalidated by reason only that—

- 5 (a) the charge in respect of which the finding, order, determination, judgment or other decision was made was a charge in respect of an offence to which section 131 applies; and
- (b) no determination of a Children's Panel was made in respect of the offence.

10 (2) A finding, order, determination, judgment or other decision of a Children's Panel or court in relation to a person shall not be invalidated by reason only that the person was not, at any relevant time, of an age to enable the Children's Panel or court to make the finding, order, determination, judgment or other decision in respect of him.

15 (3) Nothing in this section affects section 168, 169 or 170.

Mistake as to age before Children's Panels.

168. (1) Where a Children's Panel has declined to make a determination in respect of a person charged with an offence, or against whom an information or complaint has been laid or made, on the assumption (being an
20 assumption relevant to the operation of a provision of this Act) that he had or had not attained a particular age at a particular time and the Director is satisfied that the assumption was incorrectly made, the Director shall, as soon as practicable after being so satisfied, instruct an officer authorised by the Minister for the purpose of this subsection to apply, under subsection
25 (4), to a Children's Panel for a review of the case.

(2) Subsection (1) does not apply where—

- (a) the Children's Panel has declined, as referred to in that subsection, to make a determination, pursuant to section 133 (1), in respect of a child charged with an offence; and
- 30 (b) the child has been dealt with for the offence by a court.

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(3) Nothing in subsection (1) requires the Director to instruct an officer as referred to in that subsection where—

- (a) no information or complaint has been laid or made in respect of the offence with which the person is charged; and
- 5 (b) the time limited by law for the laying or making of the information or complaint has expired or would, in the opinion of the Director, be likely to expire before a determination of a Children's Panel would be made under subsection (4).

(4) An officer referred to in subsection (1) may, upon instructions
10 given by the Director pursuant to that subsection, apply to a Children's Panel to review the case to which the instructions relate and, upon the application being made, the Children's Panel may—

- 15 (a) make any determination with respect to the application that it could have made if the application were a report referred to in section 133 (1); or
- (b) determine that the application be dismissed.

Mistake as to age before courts.

169. (1) In this section, "decision" includes finding, order, determination and judgment but does not include—

- 20 (a) in relation to the Children's Court—
 - (i) a finding made for the purposes of Division 6 of Part VII;
 - (ii) an order made under section 195; or
 - (iii) an order made under section 264; or
- 25 (b) in relation to a court, other than the Children's Court—
 - (i) an order dismissing a charge;
 - (ii) an order made under section 264; or
 - (iii) an order discharging an offender under section 556A (1)
(b) of the Crimes Act, 1900.

(2) Where—

- 30 (a) a decision is made by a court in respect of an offence on the assumption (being an assumption relevant to the operation of a provision of this Act) that the person in respect of whom the

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decision is made had or had not attained a particular age at a particular time and the Director is satisfied that the assumption was incorrectly made; and

- 5 (b) the person is, at the time the Director is so satisfied, still affected by the decision,

the Director shall, as soon as practicable after being so satisfied, instruct an officer authorised by the Minister for the purpose of this subsection to apply, under subsection (3), to the court which made the decision for a review of the decision.

- 10 (3) An officer referred to in subsection (2) may, upon instructions given by the Director pursuant to that subsection, apply to a court to review the decision to which the instructions relate and, upon the application being made, the court—

- (a) not being the Children's Court, shall, where—

- 15 (i) it is of the opinion that the charge in respect of which the decision under review was made was a charge in respect of an offence to which section 131 applies; and
(ii) no determination of a Children's Panel was made in respect of the offence,

- 20 remit the case to a Children's Panel in accordance with section 173 and set aside or quash the decision;

- (b) may do either or both of the following:—

- 25 (i) set aside or quash the decision under review;
(ii) remit the case to another court in accordance with section 173;

- (c) may order that the decision under review be varied, in such manner as the court thinks fit, in so far as it appears that the purported age of the person in respect of whom that decision was made was material in relation to the nature of the decision or to the term or period for which the decision was to be effective; or

- 30 (d) may order that the application be dismissed.

- (4) The setting aside or quashing, under subsection (3) (a) or (b) (i), of a decision in respect of an offence shall not affect any information laid or complaint made in relation to the offence or any further proceedings on
35 that information or complaint.

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Failure to obtain determination of Children's Panel.

170. (1) In this section, "decision" includes finding, order, determination and judgment of the Children's Court, other than an order made under section 195.

5 **(2)** Where—

(a) a decision (not being a decision referred to in section 169 (2)) is made by the Children's Court in respect of an offence and the Director is satisfied that—

10 (i) the offence is an offence to which section 131 applies; and
(ii) no determination of a Children's Panel has been made in respect of the offence; and

(b) the person in respect of whom the decision is made is, at the time the Director is so satisfied, still affected by the decision,

15 the Director shall, as soon as practicable after being so satisfied, instruct an officer authorised by the Minister for the purpose of this subsection to apply, under subsection (3), to the Children's Court sitting at the place where the decision was made for a review of the decision.

20 **(3)** An officer referred to in subsection (2) may, upon instructions given by the Director pursuant to that subsection, apply to the Children's Court sitting at the place where the decision to which the instructions relate was made for a review of the decision and, upon the application being made, the court—

(a) shall, where—

25 (i) it is of the opinion that the charge in respect of which the decision under review was made was a charge in respect of an offence to which section 131 applies; and

(ii) no determination of a Children's Panel was made in respect of the offence,

30 remit the case to a Children's Panel in accordance with section 173; or

(b) may order that the application be dismissed.

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Effect on Children's Court's decision of remission of case to Children's Panel.

171. Where, on remission by the Children's Court of a case to a Children's Panel in accordance with section 170 (3) (a), the Children's Panel—

- 5 (a) makes a determination under section 133 (1) that the person whose case has been remitted to it should be tried for the offence to which the case relates, the decision of the court made in relation to the case before the application for review under section 169 (3) or 170 (3), as the case may be, was made shall not be affected; or
- 10 (b) makes a determination under section 133 (2) or fails to make a determination as referred to in section 133 (4), the decision of the court made in relation to the case before the application for review under section 169 (3) or 170 (3), as the case may be, was made shall be deemed to have been set aside or quashed.

15 Exclusion of damages and compensation.

172. No action for damages or compensation shall lie against any person arising out of a decision, or anything done pursuant to a decision, to which section 169 or 170 applies or the setting aside, quashing or variation of any decision pursuant to any provision of this Division.

20 Remission of cases on account of defendant's age.

173. (1) Where a court before which a person is charged with an offence is satisfied that, by reason of any provision of this Act, it did not or does not have jurisdiction to deal with the charge, it may remit the case to a Children's Panel or to such court as, in its opinion, has jurisdiction to deal with the

25 charge.

(2) A court by which an order remitting a case to another court is made under subsection (1) may, subject to the Bail Act, 1978, commit the defendant to custody until he can be brought before a Children's Panel or the other court.

30 **(3)** The clerk or other proper officer of a court by which an order remitting a case to a Children's Panel or another court is made under subsection (1) shall, upon the making of the order, deliver to the Children's

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Panel a copy of all documents and depositions in his possession relating to the case or, as the circumstances may require, to the clerk or other proper officer of the other court, all documents and depositions in his possession relating to the case.

- 5 (4) The deposition of any witness called and examined before a court by which an order remitting a case is made under subsection (1) may be accepted as evidence for either party to the case by any other court if—
- (a) the other party consents; or
- (b) it is proved on oath—
- 10 (i) that the witness is dead, or so ill as to be unable to travel, or cannot, after such search or for such reason as to the other court seems sufficient, be produced by the party tendering the deposition:
- 15 (ii) where the deposition was taken down in writing, that the deposition was taken in the presence of the other party, or, where the deposition is in the form of a transcript of the record made by a means, other than writing, of the evidence of the witness, that the record so made is a true record of that evidence and was made in the presence of the other party and that the transcript is a correct transcript of the record so made; and
- 20 (iii) that the other party or his barrister or solicitor had full opportunity of examining the witness.

PART IX.

25 THE CHILDREN'S COURT OF NEW SOUTH WALES.

DIVISION 1.—*General.*

Interpretation: Pt. IX.

174. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

30 “accused person” means an accused person within the meaning of the Bail Act, 1978;

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“member” means a member of the Children’s Court;

“senior member” means the senior member of the Children’s Court;

5 “traffic offence” means an offence created by provisions made by or under the Motor Traffic Act, 1909, the Metropolitan Traffic Act, 1900, the Local Government Act, 1919, the Motor Vehicles (Third Party Insurance) Act, 1942, or the Transport Act, 1930, and arising from the use, standing or parking of a motor vehicle or other vehicle within the meaning of any of those provisions.

10 (2) A reference in this Part to the hearing of proceedings by or before the Children’s Court includes a reference to the determination of the proceedings, and the hearing and determination of any business arising out of the proceedings, by or before the court.

15 (3) Where the expression “accused person” is used in a provision of this Part, it refers to a person in his capacity as an accused person in relation only to the offence to or with which that provision relates or is connected.

DIVISION 2.—*Constitution of the Children’s Court.*

The Children’s Court of New South Wales.

175. (1) There is hereby established a court to be known as the Children’s Court of New South Wales.

20 (2) The Children’s Court shall be a court of record.

(3) There shall be a seal of the Children’s Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the court shall be so sealed or stamped.

25 (4) Schedule 6 applies to and in respect of the Children’s Court and the members thereof.

(5) A reference in any Act to the Children’s Court is a reference to the Children’s Court of New South Wales.

*Community Welfare.***Registrar of Children's Court.**

176. The Governor may, under and in accordance with the provisions of the Public Service Act, 1979, appoint a person to be the registrar of the Children's Court and such other persons as may be necessary for the conduct of the Children's Court.

Constitution of the Children's Court.

177. (1) The Children's Court may be constituted—

- (a) by any one member; or
- (b) by a stipendiary magistrate exercising the jurisdiction of the court in accordance with a proclamation in force under subsection (2).

(2) The Governor may, by proclamation published in the Gazette, declare that the jurisdiction of the Children's Court may be exercised, in accordance with such terms and conditions, if any, as are specified in the proclamation, by any stipendiary magistrate sitting at a place so specified.

(3) The Governor may, by proclamation published in the Gazette, revoke a proclamation under subsection (2).

DIVISION 3.—Administration of the Children's Court.**Particular functions of the senior member.**

178. (1) In addition to such other functions as are conferred or imposed on the senior member by or under this Act, he shall—

- (a) administer the Children's Court;
- (b) arrange sittings of the court;
- (c) convene, at least once every 6 months, a meeting of members and such other persons as he may think fit;
- (d) confer regularly with community groups and social agencies on matters involving children and the court; and

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5 (e) as soon as practicable after 30th June, but on or before 30th September, in each year, prepare and forward to the Minister a report relating to the activities of the court and the operation of this Act and the regulations with respect to those activities during the period of 12 months ending on 30th June in that year.

10 (2) The senior member shall, in the exercise of his functions under subsection (1) (a), (b) or (c) (except in relation to the contents of any advice, report or recommendation given or made by him), be subject to the control and direction of the chairman of the bench of Stipendiary Magistrates appointed under the Justices Act, 1902, or the person for the time being acting as the chairman.

(3) The Minister shall lay any report forwarded to him under subsection (1) (e) or cause it to be laid before both Houses of Parliament as soon as practicable after its receipt by him.

15 Venue.

179. (1) Sittings of the Children's Court shall be held—

- 20 (a) in a building or room approved in that behalf by the Minister; or
(b) where, in the opinion of the court in a particular case, it is expedient that a sitting of the court be held in some other building or room approved in that behalf by the court, in that other building or room.

25 (2) If a room used or occupied by another court is approved by the Minister under subsection (1) (a) or by the Children's Court under subsection (1) (b), sittings of the Children's Court shall not be held in the room at any time when the ordinary business of that other court is being transacted.

Change of venue.

30 **180.** If it appears to the Children's Court that any matter within the jurisdiction of the court can be more conveniently or fairly heard at a sitting of the court at some other place, the court may adjourn the hearing of the matter, whether any party appears or not, and may remand any person charged before it to a sitting of the court at some other place specified by it and appoint a day for the hearing.

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DIVISION 4.—*Conduct of Proceedings before the Children's Court.***Application of the Justices Act, 1902.**

181. Subject to this Act, the Justices Act, 1902, in so far as it is not inconsistent with this Part, applies to and in respect of the Children's Court and proceedings before the court in the same way as it applies to and in respect of a justice or justices and proceedings before a justice or justices.

Rules.

182. (1) The senior member and 2 other members may together make rules of the Children's Court, not inconsistent with this Act or the regulations, for or with respect to the practice and procedure of the Children's Court.

(2) Different rules of the Children's Court may be made to apply in difference circumstances.

(3) The provisions of sections 34, 41 (I), (II) and (III) and 42 of the Interpretation Act, 1897, apply to and in respect of a rule of the Children's Court made under this Act in the same way as they apply to or in respect of a regulation, rule, by-law or instrument, as the case may be, referred to in those provisions.

Hearing of charges in Children's Court.

183. (1) A reference in this section to an offence does not include a reference to homicide, an offence punishable by death or penal servitude for life, an offence under section 61B of the Crimes Act, 1900, or the offence of attempting to commit an offence under that section.

(2) Subject to subsection (3), where a person is charged before the Children's Court with an offence, the court shall as soon as practicable hear the charge in a summary manner.

(3) Where a person is charged before the Children's Court with an indictable offence, other than an offence referred to in section 501 (1) of the Crimes Act, 1900, and—

(a) at any time in the course of the proceedings relating to the offence, the person informs the court that he wishes to take his trial according to law; or

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(b) after all the evidence for the prosecution has been taken the court is of the opinion that—

(i) a prima facie case has been made out; and

(ii) the charge may not be properly disposed of in a summary manner,

and the court informs the person that it is of that opinion,

the hearing shall not proceed under subsection (2) but the provisions of the Justices Act, 1902, as applied by section 181, apply in relation to the proceedings.

(4) Where, in circumstances referred to in subsection (3) (b), the Children's Court commits a person to take his trial according to law, the court shall forthwith furnish to the person, the Attorney General and the Minister a statement of the reasons for its decision to do so.

Publicity of proceedings.

184. (1) In proceedings under Division 6 of Part VII in the Children's Court—

(a) except as provided by paragraph (b), any persons not directly interested in the proceedings shall be excluded from the place where the proceedings are being heard; and

(b) any persons bona fide engaged in reporting or commenting upon the proceedings of the court for dissemination through a public news medium shall not be excluded from the place where the proceedings are being heard,

unless the court otherwise directs.

(2) The Children's Court, in proceedings under Division 6 of Part VII, may—

(a) direct a child who is represented at the proceedings by a barrister or solicitor to leave the place where the proceedings are being heard at any time during the hearing; or

(b) direct any person to leave the place where the proceedings are being heard during the examination of any witness,

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if the court is of the opinion that it is proper to do so.

(3) The powers exercisable by the Children's Court under subsection (2) may be exercised notwithstanding that the child or person to whom a direction under that subsection is given may be directly interested
5 in the proceedings.

Publication of names or identifying reports.

185. (1) The name of any child—

- (a) who appears as a witness before the Children's Court in any proceedings under Division 6 of Part VII;
- 10 (b) who is involved in a hearing by the Children's Court in any such proceedings; or
- (c) to whom a hearing by the Children's Court in any such proceedings relates,

shall not be published or broadcast.

15 (2) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

(3) A report (other than an official report) of the proceedings of the Children's Court shall not include information which identifies or may lead
20 to the identification of any child the publication or broadcasting of whose name is prohibited by subsection (1).

(4) A person who publishes a report which contravenes subsection (3) is guilty of an offence.

DIVISION 5.—Jurisdiction of the Children's Court.

25 Jurisdiction—generally.

186. Subject to this Act, the Children's Court has—

- (a) jurisdiction to hear proceedings in respect of an offence (whether or not an indictable offence), other than homicide, an offence punishable by death or penal servitude for life, an offence under

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section 61B of the Crimes Act, 1900, or the offence of attempting to commit an offence under that section and committal proceedings in respect of any indictable offence in either of which proceedings it is alleged that—

- 5 (i) a person, being a child when he was charged with the offence, has committed the offence; or
- (ii) a person who has attained the age of 18 years but not the age of 21 years when he was charged before the court with the offence, being an offence committed when he was
- 10 a child, has committed the offence;
- (b) subject to section 78, jurisdiction to hear proceedings under Division 6 of Part VII; and
- (c) such other jurisdiction as is conferred on the court by or under this Act.

15 State-wide jurisdiction.

187. The Children's Court, wherever sitting, shall, subject to this Part, have jurisdiction throughout the whole of New South Wales.

Traffic offences.

188. (1) The jurisdiction of the Children's Court under section 186 (a)

20 does not include jurisdiction to hear proceedings in which it is alleged that a person has committed a traffic offence unless the offence arose out of the same circumstances as another offence alleged to have been committed by the person and in respect of which the person is charged before the court.

(2) Without limiting any other provision of this Part, in proceedings

25 referred to in subsection (1), the Children's Court may, where it finds a person guilty of a traffic offence, make any order or impose any penalty in respect of the offence that could be made or imposed under the provisions creating the offence, other than an order for the imprisonment of the person.

Jurisdiction of courts of petty sessions.

30 **189.** A court of petty sessions shall not exercise jurisdiction in respect of a matter within the jurisdiction of the Children's Court.

*Community Welfare.***Child charged jointly with adult.**

190. Without affecting any other power of adjournment of the Children's Court, where a charge is made jointly against a person in respect of whom it has jurisdiction and a person in respect of whom it does not have jurisdiction, the court may adjourn the hearing of the charge against the person in respect of whom it has jurisdiction until the charge against the other person has been heard and determined.

*DIVISION 6.—Finding of Guilt, Penalties and Compensation.***Application: Pt. IX, Div. 6.**

10 191. This Division applies to any offence (other than homicide, an offence punishable by death or penal servitude for life, an offence under section 61B of the Crimes Act, 1900, or the offence of attempting to commit an offence under that section) with which a person is charged before the Children's Court except where the person is committed, in respect of the offence, to
15 the Supreme Court or the District Court under section 51A of the Justices Act, 1902, or is committed to take his trial for the offence.

General penalties.

192. The Children's Court may, in respect of an offence to which this Division applies and of which the court has found a person guilty—

- 20 (a) release the person on probation upon such terms and conditions as may be prescribed or as the court may, in any special case, think fit and for such period (irrespective of the age of the person when the period expires) but not exceeding 2 years as the court may think fit; or
- 25 (b) do either or both of the following:—
- (i) require the person to enter into a recognizance with or without sureties to be of good behaviour, to comply with such terms and conditions as the court may think fit for such period of time (irrespective of the age of the person when the period expires) but not exceeding 2 years as
30 the court may think fit and to appear and be further dealt with in accordance with the provisions of this Division if called upon at any time during the period;

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- (ii) impose on the person a fine, not exceeding the maximum fine prescribed by law for the offence or \$500, whichever is the lesser.

Penalty for offence rendering adult liable to imprisonment.

- 5 **193. (1)** In respect of an offence to which this Division applies, of which the Children's Court has found a person guilty and which, if committed by an adult, would render the adult liable to imprisonment, the Children's Court may—
- (a) exercise any of the powers conferred on the court by section 192;
 - 10 (b) make an order committing the person to the control of the Minister—
 - (i) generally; or
 - (ii) for such period (irrespective of the age of the person when the period expires) but not exceeding 2 years as the
 - 15 court specifies in the order; or
 - (c) make a children's community service order in respect of the person under section 141 (1).
- (2) The Children's Court shall not, in respect of an offence, make a control order committing a person to the control of the Minister—
- 20 (a) generally, if the maximum period of imprisonment for the offence, if committed by an adult, is less than 12 months; or
 - (b) for a specified period in excess of the maximum period of imprisonment for the offence.
- (3) Where the Children's Court makes a control order committing a
- 25 person to the control of the Minister generally, the order expires, subject to subsection (4), on the expiration of 12 months after it is made.
- (4) A control order with respect to a person ceases to be in force—
- (a) upon the making of a temporary custody order in respect of the person under section 46 (2); or
 - 30 (b) upon an order, not subject to any terms or conditions, being made under section 222 (1) (e) or 229 (5) in respect of him.

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(5) The provisions of this section with respect to the expiry of control orders have effect subject to sections 244 (3) (c) and 254 (5) (b).

No requirement to determine if child is in need of care.

194. In determining whether or not to exercise its powers under section 5 193 in respect of a child, the Children's Court shall not have regard to the question of whether the child is in need of care within the meaning of Part VII.

Powers of Children's Court in mitigating circumstances.

195. The Children's Court may, if it is of the opinion that, having regard 10 to any mitigating circumstances, it is inexpedient to exercise any of the powers conferred on the court by section 192 or 193, instead of exercising any of those powers, by order, dismiss the charge or dismiss the charge and administer a caution.

Destruction of photographs, finger-prints, etc.

15 196. (1) Where, in relation to an offence to which this Division applies, the Children's Court exercises, in respect of a person—

(a) the power conferred on it by section 192 (b) (i) but not the power conferred on it by section 192 (b) (ii) and the court is of the opinion that the circumstances of the case justify its doing so; 20 or

(b) a power conferred by section 195,

the court may order that any photograph, finger-prints or palm-prints and all other records (other than the records of the court) relating to the offence shall be destroyed by a person specified in the order at a time and place 25 determined by that person.

(2) Where the Children's Court makes an order under subsection (1) in respect of a person, it shall cause a copy of the order to be served on the person and, if the person is a child, where practicable, on any person responsible for the child.

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(3) Any person on whom a copy of the order has been served under subsection (2) may attend at the time and place specified in the order.

Drug offences.

197. (1) In this section, "drug" means—

- 5 (a) a drug of addiction;
(b) a prohibited drug; or
(c) a prohibited plant,

within the meaning of the Poisons Act, 1966.

(2) Where the Children's Court finds a person guilty of an offence
10 relating to the possession or use of a drug, it may, in exercising any of the other powers conferred on it under this Division, have regard to—

- (a) the antecedents, character, age and mental condition of the person;
(b) the degree of involvement of the person with drugs; and
15 (c) any proposals for the future treatment, rehabilitation or welfare of the person.

Recording of conviction.

198. (1) Without limiting or affecting any other power, under this Act, of the Children's Court to deal with an offender, the court—

- 20 (a) in relation to a child who has not attained the age of 16 years, shall not proceed to a conviction; and
(b) in relation to a person who has attained the age of 16 years, may proceed to a conviction.

(2) Nothing in subsection (1) limits or affects any power of a court
25 to proceed to a conviction in respect of a child who is charged with an indictable offence which is not disposed of summarily.

Committal to prison.

199. The Children's Court shall not commit a person to prison except pursuant to a provision of this Act.

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Variation of probation.

200. (1) In relation to an order of probation, the Children's Court may, on application made by or on behalf of the person to whom the order applies or any officer authorised by the Minister for the purpose of this subsection, do any one or more of the following:—

- (a) terminate the order;
- (b) reduce the period of the order;
- (c) vary any term or condition of the order in any respect including, where the person has been released on probation on condition that he remain in the care of a person named in the order, the substitution of the name of some other person for that of the person named in the order.

(2) The Children's Court may not extend the period of an order of probation.

15 Breach of terms of probation or recognizance.

201. (1) Where a person who, under this Division, was released on probation or has entered into a recognizance breaks or is reasonably suspected of having broken the terms or conditions of his release or recognizance, he may (whether or not a warrant has been issued under subsection (2)) be apprehended by any member of the police force or by any officer authorised by the Minister for the purposes of this section and shall, upon being so apprehended, be taken to a remand centre and shall, as soon as practicable thereafter, be brought before the Children's Court.

(2) Any justice, upon oath being made before him by any member of the police force or by any officer authorised by the Minister for the purposes of this section that, having made due inquiry, the member of the police force or officer believes on reasonable grounds that a person who, under this Division, was released on probation or has entered into a recognizance, has broken the terms or conditions of his release or recognizance, may—

- (a) issue his summons for the appearance of the person before the Children's Court; or
- (b) in the first instance, issue his warrant directing the apprehension of the person.

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(3) Where a warrant has been issued under subsection (2) (b), any member of the police force or any officer authorised by the Minister for the purposes of this section may, although the warrant is not at the time in his possession, arrest the person to whom the warrant relates.

5 (4) If it is proved that a breach has occurred, the Children's Court may, irrespective of the age of the person who committed the breach when the breach occurred, deal with him in any manner in which the court could have dealt with him for the offence in respect of which he was released on probation or entered into a recognizance.

10 Compensation.

202. (1) Notwithstanding any other Act or law, the Children's Court shall not make an order for or make it a term or condition of an order or recognizance that a child who has not attained the age of 16 years pay compensation.

15 (2) Without limiting any other power of the Children's Court with respect to a person who has attained the age of 16 years, the court may, under section 554 (subsections (1) and (2) excepted) of the Crimes Act, 1900, make an order for payment of compensation by such a person.

Detention in default of payment.

20 203. In the application of section 82 (2) of the Justices Act, 1902, to a person who has been adjudged—

(a) by the Children's Court;

(b) in relation to a traffic offence committed by a child, as defined in section 84A (1) of that Act, by a court of petty sessions; or

25 (c) by any other court exercising the powers of the Children's Court in accordance with section 138,

to pay any fine, penalty or costs or any sum of money, a requirement under section 82 (2) of that Act that the person be imprisoned and kept for a period calculated in accordance with the provisions of that subsection shall
30 be construed as a requirement that, instead of being imprisoned, the person be detained in a training centre for the period so calculated.

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DIVISION 7.—Appeals.

Right of appeal.

204. (1) Without limiting section 181, an appeal shall lie from any determination, finding of guilt, conviction or order made by the Children's Court (not being a committal for trial) by the persons and in the manner provided by Part V of the Justices Act, 1902.

(2) Without limiting subsection (1), an appeal—

- 10 (a) in criminal proceedings may be taken on behalf of a child and in his name by a person responsible for the child or the child's solicitor; or
- (b) in proceedings with respect to a child under Division 6 of Part VII may be taken on behalf of the child and in his name by the child's solicitor or his guardian ad litem.

15 (3) Pending the hearing of an appeal against any determination or order made by the Children's Court under Division 6 of Part VII, or upon any adjournment of the hearing of any such appeal, the provisions of section 91 apply in respect of the child to whom the proceedings in which the determination or order appealed against relate as if—

- 20 (a) the reference in that section to the adjournment of proceedings on an application under section 82 (1) or 84 (2) were a reference to an application being made, for the purposes of section 91 as applied by this subsection, during the pendency of the appeal or to an adjournment of the hearing of the appeal, as the case may be; and
- 25 (b) the reference in that section to the Children's Court were, in the case of an adjournment of the hearing of an appeal, a reference to the court hearing the appeal.

(4) Sections 95 and 184 apply to proceedings on an appeal against any determination or order made by the Children's Court under Division 6 of Part VII in the same way as they apply to proceedings under that Division.

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(5) Section 185 applies to a child to whom proceedings on an appeal against any determination or order made by the Children's Court under Division 6 of Part VII relate in the same way as it applies to a child referred to in that section.

PART X.

**CHILDREN AND OTHER PERSONS SUBJECT TO CONTROL OR ON
REMAND.**

DIVISION 1.—General.

Interpretation: Pt. X.

10 **205. (1)** In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“children's training centre” means any premises the subject of an order in force under section 9 (3) by which the premises are declared to be a children's training centre;

15 “intellectually handicapped person” has the meaning ascribed thereto by section 258 (1);

“misconduct” means any offence specified in Part 1 of Schedule 7;

“President” has the meaning ascribed thereto by section 258 (1);

20 “serious misconduct” means any offence specified in Part 2 of Schedule 7;

“training centre for intellectually handicapped persons” means any premises the subject of an order in force under section 9 (3) by which the premises are declared to be a training centre for intellectually handicapped persons;

25 “Tribunal” has the meaning ascribed thereto by section 258 (1).

(2) A reference in this Part to a person on remand is a reference to a person who under this Act is required to be detained in a remand centre.

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Objects of Part.

206. (1) The objects of this Part are to ensure that—

- (a) persons subject to control take their places in the community as soon as possible as persons who will observe the law;
 - 5 (b) in the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved; and
 - (c) satisfactory relationships are preserved or developed between persons subject to control and their families.
- 10 (2) In the administration of this Part, the welfare and interests of persons subject to control shall be given paramount consideration.

(3) In the administration of this Part, it shall be recognised that the punishment for an offence imposed by a court is the only punishment for that offence.

15 Welfare of persons subject to control.

207. The Minister may, subject to this Part, either alone or in conjunction with other persons or organisations make provision for the training and welfare of persons who are or have been subject to control.

Medical officers.

20 208. (1) The Governor may, on the recommendation of the Minister for Health and with the concurrence of the Minister, appoint a medical officer for each training centre.

(2) The Public Service Act, 1979, does not apply to or in respect of the appointment of medical officers for training centres and any such
25 medical officer is not, in his capacity as such a medical officer, subject to the provisions of that Act while he holds office as such a medical officer.

(3) Where a medical officer for a training centre is for any reason unable to act as such, any person who is a medical practitioner and is a partner with the medical officer in the practice of medicine or who is carrying

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on the medical practice of the medical officer as locum tenens may exercise the functions of the medical officer and while so doing shall be deemed to be the medical officer for the training centre.

(4) Where a medical officer for a training centre is for any reason
5 unable to act as such and there is no person in partnership with that medical officer or acting as locum tenens as referred to in subsection (3), or where the person who may exercise the functions of that medical officer under subsection (3) fails or is unable to act as medical officer for the training centre, the Government Medical Officer, appointed under the Public Health
10 Act, 1902, for the district in which the training centre is situated, shall exercise the functions of the medical officer for the training centre and while so doing shall be deemed to be the medical officer for the training centre.

(5) Where there is no medical officer for a training centre under subsection (1), the Government Medical Officer, appointed under the
15 Public Health Act, 1902, for the district in which the training centre is situated, shall be the medical officer for the training centre.

Visiting Justices.

209. (1) For each training centre for intellectually handicapped persons there shall be a Visiting Justice.

20 (2) The Visiting Justice for a training centre for intellectually handicapped persons shall be a stipendiary magistrate from time to time designated by the Minister as the Visiting Justice for the training centre.

(3) A Visiting Justice may visit and examine the training centre for
25 intellectually handicapped persons for which he is the Visiting Justice at any time he thinks fit, and, unless prevented by illness or other sufficient cause, shall visit and examine the training centre at such intervals as may be prescribed.

Minister to have control.

210. Every training centre and remand centre shall be controlled by the
30 Minister and shall be inspected once at least in every 3 months by an officer authorised by the Minister for the purposes of this section, who shall, after each inspection, submit to the Minister a report dealing with the matters prescribed.

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Examination of training centres and remand centres by judges.

211. Any judge of the Supreme Court or District Court, any member of the Children's Court and any stipendiary magistrate referred to in section 177 (2) may visit and examine any training centre or remand centre at any time he thinks fit.

Attendance of person subject to control or in remand centre before court, etc.

212. (1) Where a court of record, a judge, a person constituting such a court or a coroner is satisfied that it is desirable that a person subject to control or detained in a remand centre should be in attendance before it or him for the purposes of any legal proceedings, inquest or inquiry then pending, the court, judge, person or coroner, as the case may be, may make an order directing the superintendent of the training centre or remand centre in which the person is detained to produce the person or to cause him to be produced in court before it or him or at the place of the inquest or inquiry.

15 (2) An order made under subsection (1) shall be sufficient authority for the superintendent of the training centre or remand centre in which the person referred to in the order is detained to produce that person or to cause him to be produced in accordance with the terms of the order.

20 (3) A person produced under an order made under subsection (1) in the actual custody of the superintendent of a training centre or remand centre, an officer or a member of the police force, shall be deemed to be in lawful custody and the superintendent, officer or member of the police force shall, as soon as the court, judge, person or coroner by which or by whom the order was made so permits, return the person to the training centre or **25** remand centre from which he was produced.

Rules.

213. The Director may, with the approval of the Minister, make rules not inconsistent with this Part for the management, control, good government, supervision and inspection of training centres and remand centres.

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Defective orders, etc., validated.

214. An order, direction or endorsement purporting to be an order, direction or endorsement made under this Part that describes a training centre or remand centre in a manner sufficient to identify it, is as valid and effectual as if it specified the name and location of the training centre or remand centre.

Royal prerogative of mercy preserved.

215. Nothing in this Part limits or affects in any manner the Royal prerogative of mercy.

Savings as to functions of sheriff.

10 216. Nothing in this Part abridges or otherwise affects the functions conferred or imposed on the sheriff by or under any Act or at common law in relation to persons under lawful detention.

Name, etc., of training centre to be endorsed on control order.

15 217. The Minister shall, as soon as practicable after a control order in respect of a person is made or a direction in respect of a person is given under section 138 (a), endorse on the control order or direction an order specifying the name and location of the training centre where the person is to be detained.

Order to be forwarded to superintendent.

20 218. (1) A control order or direction given under section 138 (a), duly endorsed as provided by section 217, an order made under section 222 (1) (b) or an order made under section 224 (1), duly endorsed as provided by section 224 (2), shall be forwarded to the superintendent of the training centre where the person subject to control is to be detained and shall be
25 sufficient warrant—

- (a) to convey or transfer the person subject to control to the training centre specified in the endorsement or order made under section 222 (1) (b); and

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(b) to detain him in the training centre to which he is conveyed or transferred.

(2) A person subject to control shall be deemed, while he is being conveyed or transferred as referred to in subsection (1), to be in lawful custody.

(3) A document purporting to be—

(a) any such order or direction, and any endorsement thereon made under section 217 or 224 (2), or a document purporting to be a copy thereof;

10 (b) a copy of any such order or direction endorsed with a memorandum, purporting to be signed by the superintendent of a training centre, stating that the person the subject of the order or direction was duly received into, and is at the time of the signing thereof detained, in the training centre, or has been otherwise
15 dealt with according to law; or

(c) a control order or direction given under section 138 (a), or a document purporting to be a copy of a control order or of any such direction purporting to be certified by the clerk of the court by which the control order or direction was made or given to be a
20 correct copy,

shall, without proof of signature of the person purporting to have signed it, be admissible in evidence in all courts and proceedings and, in the absence of evidence to the contrary, be evidence—

25 (d) of the due making and signing of the order, endorsement, direction, memorandum or certificate;

(e) of the placement or detention of the person named in the order, direction, memorandum or certificate; and

(f) of any other matters stated in the order or direction.

Persons detained to be in custody of superintendent.

30 **219.** A person shall, while he is detained in a training centre or remand centre, be in the custody of the superintendent of the training centre or remand centre.

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Separate training centres for non-intellectually handicapped persons subject to control.

220. A person who, in the opinion of the Minister, is not an intellectually handicapped person shall not be detained in a training centre for intellectually
5 handicapped persons.

Detention of persons subject to control.

221. (1) Subject to subsection (2) and section 222, a person subject to control shall be detained in a training centre.

(2) A person subject to control may, for the purpose of enabling an
10 assessment report to be obtained with respect to him, be detained in a remand centre for a period not exceeding 21 days after he became subject to control or for such longer period as the Minister may in a particular case allow.

Functions of Minister in relation to persons subject to control.

222. (1) The Minister, by order in writing—

- 15 (a) shall determine the particular training centre in which a person subject to control shall from time to time be detained;
- (b) may transfer a person subject to control from one training centre to another;
- 20 (c) may remove a person subject to control (other than a person to whom section 226 applies) from a training centre and, on such terms and conditions, if any, as the Minister determines and specifies in the order, place him in the care of any reputable person approved by the Minister;
- 25 (d) may, on such terms and conditions, if any, as the Minister determines and specifies in the order, grant a person subject to control leave to be absent from a training centre; or
- 30 (e) may, on such terms and conditions, if any, as the Minister determines and specifies in the order, discharge a person subject to control (other than a person to whom section 226 applies) from detention under this Part, whether or not that person is subject to an order under paragraph (c) or (d).

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(2) Terms and conditions referred to in subsection (1) (c), (d) or (e) shall be in force for such period, not exceeding 2 years, as the Minister determines and specifies in the order by which they are imposed or until the person concerned ceases to be a person subject to control, whichever first occurs.

(3) Sections 217 and 218 apply to and in respect of an order under subsection (1) (b) as if it were a control order.

Functions of Minister in relation to persons on remand.

223. (1) The Minister, by order in writing—

- 10 (a) shall determine the particular remand centre in which a person on remand shall from time to time be detained;
- (b) may transfer a person on remand from one remand centre to another; or
- 15 (c) may, on such terms and conditions, if any, as the Minister determines and specifies in the order, grant a person on remand leave to be absent from a remand centre for the purpose of his—
- (i) attending the funeral or obsequies of a near relative;
- (ii) visiting a near relative suffering serious illness or disability;
- 20 (iii) applying for work or interviewing an employer or a prospective employer;
- (iv) attending a place of education or training in connection with any course of education or training; or
- (v) engaging in employment specified in the order,
- or for any other purposes which the Minister thinks proper.

25 (2) Terms and conditions referred to in subsection (1) (c) shall be in force for the period of leave granted.

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Transfers from prisons to training centres.

224. (1) The Minister administering the Prisons Act, 1952, may, with the consent of the Minister, by order in writing direct the transfer from a prison to a training centre of—

- 5 (a) any convicted prisoner (within the meaning of that Act) who is under the age of 21 years;
- (b) any such convicted prisoner in respect of whom a recommendation has been made under section 274; or
- 10 (c) any prisoner undergoing a sentence who, in the opinion of the Minister administering the Prisons Act, 1952, concurred in by the Minister, is an intellectually handicapped person,

there to be detained until the expiration of the unexpired portion of his sentence or until he is otherwise detained in accordance with law, whichever first occurs.

- 15 (2) The Minister shall, as soon as practicable after an order is made under subsection (1), endorse on the order an order specifying the name and location of the training centre where the person transferred is to be detained.

Provisions relating to transfer of intellectually handicapped persons.

20 225. (1) The Minister administering the Prisons Act, 1952, shall not exercise his powers under section 224 (1) in relation to a person who, in his opinion, is an intellectually handicapped person—

- (a) unless he has notified the person that he intends to exercise the powers at least 10 days before he exercises them; or
- 25 (b) where, after being so notified, the person has made an application under subsection (3), unless a Tribunal has certified that the person is, in its opinion, an intellectually handicapped person.

(2) A person transferred to a training centre pursuant to section 224 (1) (c) and ordered to be detained in a training centre for intellectually
30 handicapped persons may at any time apply to be transferred from the training centre to a prison.

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(3) An application—

(a) referred to in subsection (1) (b) may be made to the governor of the prison in which the person making the application is detained and, upon being so made, shall be forthwith referred by the governor to the President; or

5

(b) referred to in subsection (2) may be made to the superintendent of the training centre for intellectually handicapped persons in which the person making the application is detained and shall be forthwith referred by the superintendent to the President.

10 **(4)** Where the President receives an application under subsection (3), he shall refer it to a Tribunal.

(5) Where an application is referred to a Tribunal under subsection (4), the Tribunal shall thereupon inquire into the question of whether or not the applicant is an intellectually handicapped person and shall certify
15 whether, in its opinion, he is or is not such a person.

(6) Where, under subsection (5), a Tribunal certifies that an applicant referred to in subsection (2) is not an intellectually handicapped person, the Minister shall as soon as practicable furnish to the Minister administering the Prisons Act, 1952, a copy of the certificate and, by order in writing,
20 direct the transfer of the person to prison, there to serve the unexpired portion of his original sentence, and, upon his being so transferred, the person shall cease to be subject to the provisions of this Act.

Application of certain provisions of Parole of Prisoners Act, 1966, to certain persons subject to control.

25 **226. (1)** This section applies to persons subject to control by reason of an order under section 138 (a) or 224 (1) in respect of whom a non-parole period has been specified under the Parole of Prisoners Act, 1966.

(2) The provisions of the Parole of Prisoners Act, 1966, apply to and in respect of a person to whom this section applies in the same way as
30 they apply to and in respect of a prisoner and as if—

(a) a reference in any of those provisions to a prison where a reference to a training centre;

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- (b) the reference in section 6 (2) of that Act to the governor of the prison were a reference to the superintendent of the training centre; and
- 5 (c) a reference in section 8 of that Act to the Corrective Services Commission of New South Wales were a reference to the Director.

Application of certain provisions of Crimes Act, 1900, to certain persons subject to control.

10 **227.** The provisions of sections 462 to 464 of the Crimes Act, 1900, apply to and in respect of a person subject to control by reason of an order under section 138 (a) or 224 (1) in the same way as they apply to an offender undergoing a sentence, as referred to in those provisions.

Transfer of certain persons subject to control to prison.

228. (1) This section applies to persons subject to control by reason of an order under section 138 (a) or 224 (1).

15 **(2)** Where a person, not being a person detained in a training centre for intellectually handicapped persons, to whom this section applies has been detained in a training centre for a period of 3 years or if he earlier, while so detained, attains the age of 21 years, the Minister shall, by order in writing, direct the transfer of the person to prison, there to serve the
20 unexpired portion of his original sentence, and, upon his being so transferred, the person shall cease to be subject to the provisions of this Act.

(3) Where the Minister is satisfied that any person to whom this section applies and who is being detained in a training centre is not profiting from the discipline and instruction therein or that, for any other reason,
25 he is not a suitable person for detention therein, the Minister may, with the consent of the Minister administering the Prisons Act, 1952, by order in writing, direct the transfer of the person to prison, there to serve the unexpired portion of his original sentence, and, upon his being so transferred, the person shall cease to be subject to the provisions of this Act.

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Expiration of detention.

229. (1) A person subject to control may be discharged from detention at any time during the period of 24 hours immediately preceding the time when his detention as a person subject to control would otherwise have terminated.

(2) A person subject to control whose detention would, but for this subsection, terminate on a Sunday may be discharged from detention on the Saturday immediately preceding that Sunday.

(3) A person subject to control by reason of an order under section 10 138 (a) or 224 (1) shall be granted remission of the period of his detention as prescribed by the regulations.

(4) The determination of any remission of a period of detention to be granted in accordance with subsection (3) shall be made by the Director and shall be final and without appeal.

15 **(5)** Where a person subject to control, whether or not he is subject to an order under section 222 (1) (c) or (d), has been granted any remission of the period of his detention under this Part in accordance with subsection (3), the Minister, by order, may, on such terms and conditions, if any, as he determines and specifies in the order, discharge that person from
20 detention under this Part at a time earlier by the period of the remission than the time when his detention as a person subject to control would otherwise have terminated.

(6) Any terms or conditions referred to in subsection (5) shall be in force during such period (not exceeding the period for which the person
25 discharged was liable, immediately before his discharge, to be detained as a person subject to control, disregarding any remissions), as the Minister may, in writing, order.

(7) Where a person who has, under subsection (5), been discharged from detention on terms or conditions contravenes or fails to comply with
30 any such terms or conditions, the Director may, by warrant under his hand, authorise any officer or member of the police force to apprehend the person and to return him to a training centre there to be detained for the period for which he would, but for this section, have been liable, immediately before

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his discharge, to be detained as a person subject to control, and that warrant shall be sufficient authority for the apprehension of the person and his return to and detention in a training centre.

(8) A person subject to control granted any remission of the period of his detention in accordance with subsection (3) may, in such circumstances as may be prescribed or as the Minister deems to be justified, be discharged from detention not more than 14 days or, in any particular case, such longer period as the Minister determines, before the date on which he would be discharged from detention apart from this subsection.

10 **Apprehension of absconder, etc., without warrant.**

230. (1) Where—

(a) a person subject to control—

15 (i) is absent from the training centre in which he has been placed pursuant to an order made under section 222 (1) (a) or (b) otherwise than by reason of any provision of this Part or by reason of his having been released on parole; or

20 (ii) is, by reason of section 241 (1), absent from the training centre in which he has been so placed and absconds from lawful custody; or

(b) a person on remand—

25 (i) is absent from the remand centre in which he has been placed pursuant to an order made under section 223 (1) (a) or (b) otherwise than by reason of any provision of this Part; or

(ii) is, by reason of section 241 (1), absent from the remand centre in which he has been so placed and absconds from lawful custody,

30 any officer or member of the police force may apprehend the person and, if there is no warrant in force under section 231 for his apprehension, convey him to that training centre or remand centre to be delivered into the custody of the superintendent thereof, there to be detained in accordance with the control order to which he is subject.

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(2) Where the Minister is of the opinion that a person who has been dealt with under section 222 (1) (c), (d) or (e) or 223 (1) (c) is in breach of any terms or conditions that apply by reason of his having been so dealt with, the Minister may, by order in writing, direct that any officer 5 or member of the police force may apprehend the person and, if there is no warrant in force under section 231 for his apprehension, convey him to a training centre or remand centre, as the case may require, to be delivered into the custody of the superintendent thereof, there to be detained in accordance with the control order to which he is subject.

10 Apprehension of absconder, etc., subject to a warrant.

231. (1) A reference in this section to a person who has absconded from lawful custody includes a reference to a person who has been dealt with under section 222 (1) (c), (d) or (e) or 223 (1) (c) and who is in breach of any terms or conditions that apply by reason of his having been so dealt 15 with.

(2) A justice may, on application made by an officer or member of the police force, issue a warrant for the apprehension of any person subject to control or on remand who has absconded or been removed without lawful authority from lawful custody.

20 (3) Where a person subject to control or on remand who has absconded from lawful custody is apprehended and there is in force a warrant issued under subsection (2) by reason of his having so absconded—

(a) if the person is alleged to have committed an offence under section 244, he shall, as soon as practicable, be brought—

25 (i) if he is under the age of 21 years, before the Children's Court; or

(ii) if he has attained the age of 21 years, before a court of petty sessions,

to be dealt with according to law; or

30 (b) except as provided in paragraph (a), he shall, as soon as practicable, be conveyed to the training centre or remand centre at which he was last detained before he absconded to be delivered into the custody of the superintendent thereof, there to be detained

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in accordance with the control order to which he is subject or the requirement under this Act that he be detained in a remand centre.

DIVISION 2.—*Treatment of Persons Subject to Control or on Remand.*

5 Exercise.

232. (1) Every person subject to control or on remand shall be allowed so much exercise in the open air as may be prescribed or, in the case of a person detained in a training centre, where the medical officer for the training centre in any particular case orders otherwise, so much exercise
10 as is so ordered.

(2) Persons subject to control or on remand may engage in such active sport or leisure activity as may be provided for them by the Director and may participate with or compete against other persons, whether or not they are subject to control or on remand, in sport or leisure activities on
15 training centre grounds or remand centre grounds or, subject to section 222 (1) (d) or 223 (1) (c), elsewhere.

Clothing.

233. Every person subject to control shall be provided by the Director with sufficient clothing to maintain health and decency.

20 Diet.

234. Every person subject to control or on remand shall be supplied by the Director with sufficient food to maintain health and the scale of diet shall be as prescribed.

Separation of persons subject to control.

25 235. So far as is reasonably practicable and where the regulations so provide, different classes of persons subject to control shall be kept separated from other classes of persons subject to control in accordance with the regulations.

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Medical attention.

236. Every person subject to control or on remand shall be supplied by the Director with such medical attendance, treatment and medicine as in the opinion—

- 5 (a) in the case of a person detained in a training centre, of the medical officer for the training centre; or
- (b) in the case of a person detained in a remand centre, of a medical practitioner appointed by the Director to attend upon the person,

10 is necessary for the preservation of the health of himself, other persons subject to control or on remand and officers, and may be so supplied with such medical attendance, treatment and medicine as in the opinion of the Director will alleviate or remedy any congenital or chronic condition.

Private property.

237. (1) Every person subject to control or on remand shall, upon his
15 reception into a training centre or remand centre, surrender to the superintendent of the training centre or remand centre all property in his possession.

(2) The superintendent of the training centre or remand centre may require a person subject to control or on remand, as the case may be, to send away or to cause to be sent away from the training centre or remand
20 centre any or all of his property surrendered.

(3) The property of a person subject to control or on remand not sent away in accordance with subsection (2) shall be retained by the superintendent of the training centre or remand centre, as the case may be, and returned to the person subject to control or on remand immediately before
25 his being discharged from custody.

(4) A record shall be kept of all property surrendered in accordance with subsection (1) and sent away in accordance with subsection (2).

(5) A person subject to control or on remand may deal with
30 property retained in accordance with subsection (3) only in such manner as may be prescribed.

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Work to be performed by persons subject to control.

238. (1) Subject to the direction of the Director, the superintendent of a training centre may order any person subject to control detained in the training centre to carry out work suitable to his physical capacity.

- 5 (2) Persons subject to control may, under subsection (1), be ordered to carry out work outside the training centre in which they are detained and while outside the training centre shall be deemed to be in the lawful custody of the superintendent of the training centre.

Segregation for psychological reasons.

10 **239.** (1) Where the superintendent of a training centre believes on reasonable grounds that it is in the interests of a person subject to control detained in the training centre to be segregated, for psychological reasons, from other persons subject to control in the training centre, the superintendent may, with the consent of the person, direct the segregation of the person,
15 subject to compliance with the following provisions:—

- (a) the nature and duration of the segregation shall be reasonable having regard to the age, mental condition and development of the person;
- 20 (b) in any period of 72 hours, the duration of the segregation shall not exceed 12 hours;
- (c) the person shall be provided with some means of usefully occupying himself;
- 25 (d) the physical environment, including furnishings, of the place where the person is kept segregated shall, as far as practicable, be no less favourable than the physical environment of other places occupied by persons subject to control in the training centre;
- (e) where the person is a child, he shall be so segregated that at all times he can be seen by and may see and speak to an officer.

(2) A person subject to control shall not be segregated under sub-
30 section (1) for the purpose of punishing him.

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(3) The superintendent of the training centre concerned shall make a record containing such particulars as may be prescribed of any segregation effected under subsection (1).

Segregation in training centres for intellectually handicapped persons.

5 **240.** A person detained in a training centre for intellectually handicapped persons shall not be segregated from other persons so detained.

Removal to hospital of persons subject to control or persons detained in remand centres.

10 **241. (1)** A person subject to control detained in a training centre or a person on remand detained in a remand centre may, by order of the Director, or in cases of exigency by order of the superintendent of the training centre or remand centre, as the case may be, be removed from the training centre or remand centre to a hospital or other place specified in the order for medical attendance and treatment considered by the Director or that
15 superintendent, as the case may be, to be necessary or desirable.

(2) A person subject to control or on remand who is removed from a training centre or remand centre pursuant to an order made under subsection (1) shall, while he is away from the training centre or remand centre, be deemed to be in the lawful custody of the superintendent of the training
20 centre or remand centre.

(3) The superintendent of the training centre or remand centre may, if he thinks fit, direct any officer to take charge of a person subject to control or on remand removed in accordance with an order made under subsection (1) while he is in the hospital or at the other place to which he was removed.

25 **(4)** On the certificate of—

(a) the medical superintendent or other person in charge of a hospital that a person removed to the hospital in accordance with an order made under subsection (1); or

30 (b) a medical practitioner that a person removed to a place other than a hospital in accordance with an order made under subsection (1),

may be discharged therefrom or on revocation of the order, the person shall—

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- (c) where an officer has charge of him under subsection (3), forthwith be returned; or
- (d) where an officer does not have charge of him under subsection (3), forthwith return,

5 to the training centre or remand centre from which he was so removed.

(5) Where a person to whom subsection (4) applies fails to return or is not returned, in accordance with that subsection to the training centre or remand centre from which he was removed, he shall be deemed to have absconded from lawful custody.

10 Prohibited punishments.

242. (1) Without affecting section 206 (3), a person subject to control or on remand shall not be punished for misconduct or serious misconduct except in accordance with Division 4 or 5 and, in particular, shall not be punished—

- 15 (a) by being struck, cuffed, shaken or subjected to any other form of physical violence;
- (b) by being dosed with medicine or any other substance; or
- (c) by being compelled to hold himself in a constrained or fatiguing position.

20 (2) A person subject to control or on remand shall not, without lawful excuse, be handcuffed or forcibly restrained.

DIVISION 3.—*Offences.*

Interpretation: Pt. X, Div. 3.

243. In this Division, “centre” means a training centre or a remand centre.

25 Absconding from centres.

244. (1) A person subject to control, not being a child, who is ordered to be detained in a centre, being a training centre for intellectually handicapped persons, and who absconds or attempts to abscond from lawful custody is guilty of an offence and liable to imprisonment for a period not

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exceeding 2 years, to be served after the expiration of any period of detention to which the person was subject at the time of his absconding or attempt to abscond.

(2) A person—

- 5 (a) being a person subject to control who is ordered to be detained in a children's training centre;
- (b) being a child subject to control who is ordered to be detained in a training centre for intellectually handicapped persons; or
- 10 (c) being a person required by this Act to be detained in a remand centre,

who absconds or attempts to abscond from lawful custody is guilty of an offence and liable to imprisonment for a period not exceeding 3 months.

(3) Where a person subject to control is ordered to be imprisoned pursuant to subsection (2)—

- 15 (a) the imprisonment shall commence on the date of the order;
- (b) the person shall, upon the expiration of the period of his imprisonment, be returned to the custody of the superintendent of the centre in which he was ordered to be detained immediately before he was ordered to be imprisoned; and
- 20 (c) the period of the control order to which he is subject shall be extended by the period equivalent to the period for which he was imprisoned.

(4) For the purposes of, but without limiting, subsections (1) and (2), a reference in those subsections to a person absconding from lawful
25 custody includes a reference to a person who has been granted leave to be absent from a centre and who, within 7 days after the expiration of that leave, has failed to return or has not been returned to the centre.

(5) Where a person has absconded from lawful custody as referred to in section 241 (5) or subsection (4), he is not guilty of an offence under
30 subsection (1) or (2) if he had a reasonable excuse for failing to return or for not being returned to the centre from which he was removed or from which he was absent on leave, as the case may be.

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Aiding abscondings from centres.

245. (1) A person who—

- (a) aids a person subject to control or on remand in absconding or attempting to abscond from lawful custody; or
- 5 (b) conveys anything or causes anything to be conveyed into a centre or to a person subject to control or on remand with intent to facilitate the absconding of any such person subject to control or on remand,

is guilty of an offence and, where the person subject to control or on remand
10 is a person—

- (c) referred to in section 244 (1)—is liable to imprisonment for a period not exceeding 2 years; or
- (d) referred to in section 244 (2)—is liable to the penalty provided by section 304.

15 **(2)** Section 244 (4) applies for the purposes of subsection (1).

Rescuing person subject to control or on remand from lawful custody.

246. A person who, by force, rescues or attempts to rescue from lawful custody a person subject to control or on remand is guilty of an offence and, where the person subject to control or on remand is a person—

- 20 (a) referred to in section 244 (1)—is liable, upon being convicted on indictment, to imprisonment for a period not exceeding 14 years; or
- (b) referred to in section 244 (2)—is liable to the penalty provided by section 304.

25 Permitting to escape.

247. An officer or a member of the police force who, while having the actual custody of a person subject to control or on remand, wilfully permits him to escape from custody is guilty of an offence and is liable, upon being convicted on indictment, to imprisonment for a period not exceeding 7
30 years.

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Harbouring absconder.

248. A person who knowingly harbours, maintains or employs a person subject to control or on remand whom he knows to have absconded from lawful custody is guilty of an offence and liable—

- 5 (a) upon being convicted on indictment—to imprisonment for a period not exceeding 3 years; or
- (b) upon being convicted summarily—to a penalty not exceeding \$1,000.

Liquor and drugs.

- 10 **249.** A person who, without lawful authority, brings or attempts to bring into any centre any spirituous or fermented liquor or any drug is liable to imprisonment for a period not exceeding 6 months or to a penalty not exceeding \$500 or to both such imprisonment and penalty.

Miscellaneous offences.

- 15 **250.** A person who, without lawful authority—
- (a) enters or attempts to enter any centre;
- (b) communicates, or attempts to communicate, with any person ordered or required to be detained in a centre;
- 20 (c) conveys or delivers, or causes to be conveyed or delivered, or in any manner whatsoever attempts to convey or deliver, or to cause to be conveyed or delivered, to any person ordered to be detained in a centre, or introduces or attempts to introduce into any centre, any money, letter or other document, clothing or other article or thing; or
- 25 (d) secretes or leaves at any place any money, letter, document, clothing, article or thing, for the purpose of its being found or received by any person ordered or required to be detained in a centre,

is guilty of an offence.

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Time for prosecutions under section 249 or 250.

251. Proceedings for an offence under section 249 or 250 may be commenced within 12 months after the offence was committed.

DIVISION 4.—Discipline in Children's Training Centres and Remand Centres.**5 Application: Pt. X, Div. 4.**

252. This Division applies to persons subject to control or on remand who have been ordered or are required to be detained in children's training centres or remand centres.

Punishment for misconduct.**10 253. (1) Where—**

(a) a person subject to control or on remand is charged with misconduct or, being under the age of 16 years, with serious misconduct; or

15 (b) the Director has served on the superintendent of a children's training centre or a remand centre a notice under subsection (4) in respect of a person subject to control or on remand who has been ordered or is required to be detained in that training centre or remand centre and that person is charged with the serious misconduct to which the notice relates,

20 the superintendent of the training centre or remand centre in which the person has been ordered or is required to be detained shall inquire into the charge and, if he finds the person guilty of the misconduct or serious misconduct charged, may—

(c) dismiss the charge; or

25 (d) impose any one or more of the following forms of punishment:—

(i) caution;

(ii) deprivation of specified amenities or privileges for a period not exceeding 7 days;

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- 5
- (iii) exclusion from participation in recreational pursuits for a period not exceeding 7 days;
 - (iv) additional duties, for a period not exceeding 7 days, of a constructive nature designed to promote the welfare of persons detained in the training centre or remand centre;
 - (v) subject to subsection (2), confinement in a room for a period not exceeding 6 hours.

(2) Punishment referred to in subsection (1) (d) (v) shall be imposed only subject to compliance with the following provisions:—

- 10
- (a) the person subject to the punishment shall be provided with some means of usefully occupying himself;
 - (b) the physical environment, including furnishings, of the place where the person subject to the punishment is confined shall, as far as practicable, be no less favourable than the physical environment of other places occupied by persons ordered or required to be

15

 - (c) where the person subject to the punishment is a child, he shall be so confined that at all times he can be seen by and may see and speak to an officer.

20 (3) A punishment may not be imposed under subsection (1) on a person subject to control or on remand so as to interfere with visits to that person by any of his relatives.

25 (4) The Director may serve on the superintendent of a children's training centre or a remand centre a notice informing him that a person subject to control or on remand who has been ordered or is required to be detained in that training centre or remand centre and who is of or above the age of 16 years should not, in the interests of the person, be charged before a court with the serious misconduct to which the notice relates.

30 (5) An inquiry for the purposes of subsection (1) shall be conducted in accordance with such procedures as may be prescribed.

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(6) A person charged as referred to in subsection (1) shall be afforded reasonable opportunity to confer with persons who he considers may be able to give evidence in the inquiry relating to the charge or to assist him in that inquiry.

5 (7) The rules of law governing the admission of evidence do not apply in respect of an inquiry for the purposes of subsection (1).

(8) The decision of the superintendent under subsection (1) is not subject to appeal to any court.

(9) Where an inquiry for the purposes of subsection (1) is con-
10 ducted by the superintendent of a children's training centre or a remand centre, he shall cause to be recorded—

- (a) any admissions made by the person subject to control or on remand to whom the inquiry relates;
- 15 (b) where he finds the person guilty of the misconduct or serious misconduct charged, his findings and the evidence on which he based them; and
- (c) any decision referred to in subsection (1) (c) or (d) made by him pursuant to the inquiry.

Punishment for serious misconduct.

20 **254. (1)** This section does not apply in respect of—

- (a) serious misconduct committed by a person under the age of 16 years; or
- (b) serious misconduct referred to in a notice under section 253 (4).

(2) A person subject to control or on remand who commits serious
25 misconduct is guilty of an offence and liable to be punished in accordance with subsection (4).

(3) Where a person subject to control or on remand is charged with
an offence referred to in subsection (2), he shall, as soon as practicable,
be taken before the Children's Court which shall hear and determine the
30 charge.

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(4) Where the Children's Court finds the person brought before it under subsection (3) guilty of the offence charged, it may—

- 5 (a) order that the person subject to control or on remand be punished by any one or more of the forms of punishment referred to in section 253 (1) (d) (i)–(v); or
- (b) commit the person to prison for a period, not exceeding 3 months, commencing on the date of the committal.

(5) Where a person subject to control is committed to prison under subsection (4) (b)—

- 10 (a) he shall, upon the expiration of the period of his imprisonment, be returned to the custody of the superintendent of the children's training centre in which he was ordered to be detained immediately before he was committed to prison; and
- 15 (b) the period of the control order to which he is subject shall be extended by the period equivalent to the period for which he was imprisoned.

DIVISION 5.—Discipline in Training Centres for Intellectually Handicapped Persons.

Application: Pt. X, Div. 5.

- 20 **255.** This Division applies to persons subject to control who have been ordered to be detained in training centres for intellectually handicapped persons.

Punishment for misconduct.

- 25 **256. (1)** Where a person subject to control is charged with misconduct, the superintendent of the training centre in which the person has been ordered to be detained shall inquire into the charge and, if he finds the person guilty of the misconduct charged, may—

- (a) dismiss the charge;

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(b) impose any one or more of the following forms of punishment:—

(i) caution;

(ii) deprivation of specified amenities or privileges for a period not exceeding 7 days;

5 (iii) exclusion from participation in recreational pursuits for a period not exceeding 7 days;

(iv) additional duties, for a period not exceeding 7 days, of a constructive nature designed to promote the welfare of persons detained in the training centre; or

10 (c) deal with the person under subsection (7).

(2) A punishment may not be imposed under subsection (1) on a person subject to control so as to interfere with visits to that person by any of his relatives.

(3) An inquiry for the purposes of subsection (1) shall be conducted
15 in accordance with such procedures as may be prescribed.

(4) A person charged as referred to in subsection (1) shall be afforded reasonable opportunity to confer with persons who he considers may be able to give evidence in the inquiry relating to the charge or to assist him in that inquiry.

20 (5) The rules of law governing the admission of evidence do not apply in respect of an inquiry for the purposes of subsection (1).

(6) The decision of the superintendent under subsection (1) is not subject to appeal to any court.

(7) Where, after an inquiry for the purposes of subsection (1), the
25 superintendent finds the person subject to control guilty of the charge to which the inquiry relates but is of the opinion that the misconduct to which the inquiry relates is of such a serious nature as to warrant its being dealt with as serious misconduct, the person may be charged under section 257 as if the misconduct were an offence referred to in that section and the provisions
30 of that section apply to and in respect of the misconduct in all respects as if it were serious misconduct constituting an offence under that section.

Community Welfare.

(8) Where an inquiry for the purposes of subsection (1) is conducted by the superintendent of a training centre, he shall cause to be recorded—

- (a) any admissions made by the person subject to control to whom the inquiry relates;
- 5 (b) where he finds the person guilty of the misconduct charged, his findings and the evidence on which he based them; and
- (c) any decision referred to in subsection (1) (a), (b) or (c) made by him pursuant to the inquiry.

Punishment for serious misconduct.

10 **257. (1)** A person subject to control who commits serious misconduct is guilty of an offence and liable to be punished in accordance with subsection (6).

(2) Where a person subject to control is charged with an offence referred to in subsection (1), he shall, as soon as practicable, be taken before
15 a court of petty sessions held before the Visiting Justice for the training centre in which the person has been ordered to be detained and the court of petty sessions shall hear and determine the charge.

(3) The court of petty sessions referred to in subsection (2) may be held at the training centre in which the person charged has been ordered to
20 be detained or at the place appointed under section 5 (1) of the Justices Act, 1902, nearest to that training centre.

(4) The Justices Act, 1902, in so far as it is not inconsistent with this Division or the regulations, applies to and in respect of proceedings for an offence referred to in subsection (1) in the same way as it applies to
25 and in respect of proceedings before a justice or justices for any other offence.

(5) In the application of section 36 of the Justices Act, 1902, to and in respect of proceedings for an offence referred to in subsection (1), the reference in section 36 (3) of that Act to the counsel or attorney of the defendant includes a reference to the person who is his representative, as
30 defined in section 258 (1).

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(6) Where the court of petty sessions finds the person brought before it under subsection (2) guilty of the offence charged, it may—

(a) order that the person subject to control be punished by any one or more of the following forms of punishment:—

- 5 (i) any form of punishment referred to in section 256 (1) (b) (i), (iii) or (iv);
- (ii) deprivation of specified amenities or privileges for a period not exceeding 14 days;
- 10 (iii) forfeiture of any payments, exceeding the prescribed minimum, to which he would, but for the order, be entitled under the regulations; or
- (b) order that the control order to which the person is subject be extended for such period, not exceeding 3 months, as is specified in the order.

15

PART XI.**HANDICAPPED PERSONS' WELFARE.****DIVISION 1.—General.****Interpretation: Pt. XI.**

258. (1) In this Part, except in so far as the context or subject-matter
20 otherwise indicates or requires—

“intellectual handicap” means a condition characterised by—

- (a) inadequate social adjustment;
- (b) a retarded rate of maturation; or
- (c) a significant limitation of learning capacity,
- 25 due to arrested or limited development of intellectual functioning;

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“intellectually handicapped person” means a person who is intellectually handicapped, but does not include a mentally ill person, as defined in section 4 of the Mental Health Act, 1958;

5 “intellectually handicapped person under guardianship” means a person who is subject to an order made under section 80 (1) (d), 263 (1) or 264 (1);

“member” means a member of the Review Panel;

“President” means the President of the Tribunals;

10 “representative”, in relation to a handicapped person, means a person or non-Government organisation nominated under section 262 (1) to be the representative of the handicapped person;

“Review Panel” means the Intellectually Handicapped Persons Review Panel established pursuant to section 261;

15 “Tribunal” means an Intellectually Handicapped Persons Review Tribunal established under Schedule 8.

(2) In this Division, “handicapped person” means a person who is intellectually handicapped, physically handicapped, sensorily handicapped or mentally ill and who, as a result, is restricted in one or more major life activities and requires supervision or social habilitation.

20 **Object of Part.**

259. The object of this Part is to ensure the provision in accordance with this Part of services for handicapped persons to enable them to live as normal a life in the community as their handicaps permit.

Provision of services for handicapped persons by the Minister.

25 **260. (1)** This section does not apply in respect of an intellectually handicapped person under guardianship.

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(2) Subject to subsection (3), the Minister may provide for a handicapped person any one or more of the following facilities or services:—

- (a) accommodation;
- (b) maintenance;
- 5 (c) care;
- (d) training;
- (e) medical treatment;
- (f) advisory services;
- (g) employment;
- 10 (h) any other prescribed facility or service or facility or service belonging to a prescribed class of facilities or services.

(3) The Minister may not provide any facilities or services under subsection (2) for a particular handicapped person, except upon the request (whether or not in writing), where the handicapped person is—

- 15 (a) a child under the age of 14 years—of a person responsible for the child;
- (b) a child of or above the age of 14 years but under the age of 16 years—of the child or a person responsible for the child; or
- 20 (c) of or above the age of 16 years—of the handicapped person or the representative of the handicapped person.

(4) The Minister shall, when requested to do so by a person, referred to in subsection (3), at whose request any facility or service, referred to in subsection (2), may be provided for a handicapped person, cease to provide that facility or service for that handicapped person.

- 25 (5) The Minister may make such charges for services provided by him under subsection (2) as he thinks fit or may, in any case, provide any of those services free of charge.

Intellectually Handicapped Persons Review Panel.

30 **261. (1) There shall be an Intellectually Handicapped Persons Review Panel.**

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(2) Schedule 8 applies to and in respect of the Review Panel and the members thereof.

Handicapped persons' representatives.

262. (1) A handicapped person of or above the age of 16 years may, 5 by an instrument in writing served on the Director, nominate a person (not being a public servant) or non-Government organisation to be his representative for the purposes of this Division.

(2) Where an intellectually handicapped person does not have a representative under subsection (1) and a request is made by any person to 10 the Director for a Tribunal to nominate a person or non-Government organisation to be the representative of the intellectually handicapped person for the purposes of this Division, the Director shall refer the request to the President.

(3) When the President receives a request under subsection (2), he 15 shall refer it to a Tribunal which, if it is satisfied that the intellectually handicapped person concerned is unable to nominate a person to be his representative for the purposes of this Division, may nominate, by an instrument in writing served on the Director, a person or non-Government organisation to be such a representative of that person.

20 (4) A nomination under subsection (1) is not invalid by reason of the incapacity of the person who made it but, where the Director is of the opinion that the person who made it was incapable of making it, the Director may refer the nomination to the President.

(5) Where a nomination is referred to the President pursuant to 25 subsection (4), it shall be dealt with as if it were a request made under subsection (2) and, unless the person nominated by the nomination is nominated by the Tribunal as the representative of the handicapped person concerned, the nomination shall cease to have any further force or effect.

(6) A nomination under subsection (1) may, by an instrument in 30 writing served on the Director, be revoked at any time by the handicapped person who made it.

Community Welfare.

(7) Where a request is made to the Director by any person for the revocation of a nomination under subsection (3), the Director, the President and a Tribunal shall deal with the request in the same way as a request referred to in subsection (2) and the Tribunal to which the request is referred, if it thinks fit, may, by an instrument in writing served on the Director, revoke the nomination and may, if it is satisfied that the intellectually handicapped person concerned is unable to nominate a person to be his representative for the purposes of this Division, in addition, if it thinks fit, in like manner make a further nomination.

10 (8) The representative of a handicapped person has, in relation to that person, the functions conferred on him by this Part and, in addition, may, on behalf of that person, make any representations to, or conduct any negotiations with, the Minister in relation to the exercise, in relation to that person, of the Minister's functions under this Part.

15 **Minister's power to declare persons to be intellectually handicapped persons under guardianship.**

263. (1) Subject to this section, where the Minister is satisfied that—

- 20 (a) a person 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 to become an intellectually handicapped person under guardianship,

the Minister may, by order in writing, declare the person to be an
25 intellectually handicapped person under guardianship.

(2) The Minister shall not make an order under subsection (1) in respect of—

- (a) a ward, unless the requirements prescribed by subsection (3) (a) have been complied with;
- 30 (b) a child, other than a ward, except upon an application made by a person responsible for the child and unless the requirements prescribed by subsection (3) (b) have been complied with; or
- (c) any other person, unless the requirement prescribed by subsection (3) (c) has been complied with.

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(3) For the purposes of—**(a) subsection (2) (a), the prescribed requirements are that—**

- 5 (i) notice of the Minister's proposal to make the order under subsection (1) shall be given to every person who, immediately before the child became a ward, was a person responsible for the child and to the representative, if any, of the child, if their whereabouts are known or can be ascertained by reasonable inquiry;
- 10 (ii) the order shall not be made for at least 21 days after the last of the notices has been given; and
- (iii) the Minister shall take into consideration any representations made to him with respect to the ward before he makes the order;
- 15 (b) subsection (2) (b), the prescribed requirements are the same requirements as those specified in paragraph (a), except that the notice referred to in paragraph (a) (i) shall, instead of being given to the persons referred to in that subparagraph, be given to every person, other than the applicant, who is responsible for the child, if their whereabouts are known or can be ascertained
- 20 by reasonable inquiry; and
- (c) subsection (2) (c), the prescribed requirement is that a Tribunal has, pursuant to a reference made to it in accordance with subsection (4), approved of the Minister's proposal to make the order under subsection (1).

- 25 **(4) Where the Minister proposes to make an order under subsection (1) in respect of a person, other than a child, he shall first refer the proposal to the President, who shall refer it to a Tribunal, which may approve or refuse to approve of the proposal.**

30 Court's power to declare person to be intellectually handicapped person under guardianship.

264. (1) Where a person—

- (a) not being a child, is found guilty of an offence punishable by a court of summary jurisdiction or an offence referred to in section 476 (1) of the Crimes Act, 1900; or

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(b) being a child, is found guilty of an offence other than homicide, an offence punishable by death or penal servitude for life, an offence under section 61B of the Crimes Act, 1900, or the offence of attempting to commit an offence under that section,

5 the court may, if it is satisfied that—

(c) the person 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

10 (d) the interests of the person would be promoted if he were to become an intellectually handicapped person under guardianship,

by order in writing, declare the person to be an intellectually handicapped person under guardianship.

(2) The power of a court under subsection (1) is in addition to any
15 other powers the court has in respect of a person found guilty of an offence.

(3) Before an order is made in respect of a person under subsection
(1), the court, in addition to giving consideration to any assessment reports
with respect to the person that are put before it, shall give consideration to
any reports before it concerning the developmental history, social functioning,
20 recent psychological examination and recent medical examination of the
person.

(4) Section 293 (2) applies to and in respect of an additional report
referred to in subsection (3) in the same way as it applies to and in respect
of an assessment report.

25 (5) Where the person in charge of a non-Government organisation
or any other reputable person approved by the Minister is willing to undertake
the custody of the person in respect of whom an order has been made under
subsection (1), the court may, except where it sentences the person in respect
of whom the order has been made under subsection (1) to imprisonment
30 or makes a control order in respect of him, when making the order under
subsection (1), also make an order, in writing, placing the intellectually
handicapped person in the custody of that person.

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Relationship of Minister to intellectually handicapped person under guardianship.

265. The Minister is the guardian of the person, and, subject to this Act, has the custody, of an intellectually handicapped person under guardianship, whether or not he has attained the age of 18 years, to the exclusion of any other person, and may exercise the functions of a guardian of the person of that person as if he were under the age of 14 years.

Duration of orders.

266. (1) Except as provided by subsections (2) and (3), an intellectually handicapped person under guardianship ceases to be such a person—

- 10 (a) if he was a child when the order declaring him to be such a person was made—when he attains the age of 18 years; or
- (b) if he was a person, other than a child, when the order declaring him to be such a person was made—upon the expiration of 2 years after the order was made.

15 (2) An intellectually handicapped person under guardianship ceases to be such a person—

- (a) upon his being discharged from guardianship under this Part; or
- (b) upon the expiration of any period for which the order declaring him to be such a person is renewed under subsection (6) or (9)
- 20 (a), unless before the expiration of that period the order is renewed for a further period.

(3) An intellectually handicapped person under guardianship does not cease to be such a person under subsection (1) if the order declaring him to be such a person is renewed under this section.

25 (4) Within the period of 3 months before an intellectually handicapped person under guardianship would, unless the order declaring him to be such a person were to be renewed under this section, cease under subsection (1) or (2) to be such a person, the Minister shall obtain up to date reports concerning the person's education, developmental history, social

30 functioning, recent psychological examination and recent medical examination and shall refer those reports to the President with a request that a Tribunal determine whether or not the order should be renewed.

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(5) When the President receives reports and a request under subsection (4), he shall refer them to a Tribunal.

(6) Where a request is made under subsection (4), the Tribunal to which the request has been referred—

- 5 (a) shall give consideration to the Minister's request and the reports available to the Minister;
- (b) may call other evidence on the matter; and
- 10 (c) if satisfied that the person ought to remain an intellectually handicapped person under guardianship, shall renew the order for a period, or further period, of not less than 6 months nor more than 2 years.

(7) An order may be renewed irrespective of the age of the intellectually handicapped person under guardianship.

15 (8) Where a Tribunal is investigating a request made under subsection (4), the intellectually handicapped person under guardianship who is the subject of review need not be called before the Tribunal.

(9) If a Tribunal is not in a position to decide whether an order declaring a person to be an intellectually handicapped person under guardianship should be renewed without first obtaining additional information, it—

- 20 (a) may make an interim determination renewing the order for a further period of up to 2 months from the day on which, unless the order were to be renewed under this subsection, the intellectually handicapped person under guardianship would cease under subsection (1) or (2) to be such a person; and
- 25 (b) shall make a decision whether or not to renew or further renew the order before the expiration of that further period.

(10) Where a Tribunal renews an order under subsection (6) or makes an interim order under subsection (9), it may make such recommendations as it deems fit with respect to the care, protection or
30 supervision of the person the subject of the order and the Director shall, from time to time, as requested by the President, furnish to him a report with respect to the implementation of those recommendations.

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Discharge of intellectually handicapped person from guardianship by Minister or Tribunal.

267. (1) An application may be made to the Minister, by an intellectually handicapped person under guardianship or by the representative or a relative or friend of that person, for that person to be discharged from guardianship under this Part.

(2) The Minister shall refer an application made to him under subsection (1) to the President who shall refer it to a Tribunal which shall thereupon inquire into the matter and proceed to hear and determine the application.

(3) If it is satisfied that an intellectually handicapped person under guardianship in respect of whom an inquiry under subsection (2) is held is no longer intellectually handicapped to such a degree as to warrant his remaining under guardianship, the Tribunal by which the inquiry is held may, by order in writing, direct that that person be discharged from guardianship under this Part and thereupon that person is discharged from guardianship under this Part.

(4) Before making an order under subsection (3) in respect of an intellectually handicapped person under guardianship, the Tribunal, in addition to giving consideration to any assessment reports with respect to the person that are put before it, shall give consideration to any reports before it concerning the developmental history, social functioning, recent psychological examination and recent medical examination of the person.

(5) Section 293 (2) applies to and in respect of an additional report referred to in subsection (4) in the same way as it applies to and in respect of an assessment report.

(6) Where the Tribunal by which an inquiry is held under subsection (2) in respect of an intellectually handicapped person under guardianship does not make an order under subsection (3) relating to that person, it may make such recommendations to the Minister with respect to the care, protection or supervision of that person as it deems fit and the Minister shall have regard to those recommendations when exercising his functions in respect of that person.

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Rights of intellectually handicapped person under guardianship at proceedings.

268. An intellectually handicapped person in respect of whom any proceedings are held before a Tribunal under this Division has the right to be heard and to call witnesses and the right to examine witnesses either personally
5 or by his barrister, solicitor or representative.

Absence of intellectually handicapped person.

269. Where an intellectually handicapped person under guardianship absents himself from the place at which he is required by the Minister or his custodian to reside, without leave of the Minister or the custodian, he
10 may be taken and returned to that place by any member of the police force or by an officer authorised by the Minister for the purpose of this section.

Management of affairs or estate of intellectually handicapped person under guardianship.

270. Where he considers it desirable to do so, the Minister with the
15 concurrence of a Tribunal may, by instrument in writing, appoint the Public Trustee to act as manager of the estate of an intellectually handicapped person under guardianship and the Public Trustee, when so appointed, may act as manager of the estate of that person as if he were a protected person referred to in section 12 (1) (v) of the Public Trustee Act, 1913, and the
20 Public Trustee had been duly appointed to act as manager of his estate.

Cost of maintenance of intellectually handicapped person under guardianship.

271. (1) The cost to the Crown, not exceeding such amount as may be prescribed for the purposes of this subsection as the cost of board and lodging, of the accommodation, care and maintenance of an intellectually handicapped
25 person under guardianship, not being a child, shall constitute a debt due to the Crown and shall be recoverable accordingly from that person or his estate.

(2) Notwithstanding subsection (1), where the Minister considers that undue hardship would be occasioned by the enforcement of the debt referred to in that subsection or other circumstances so warrant, he may in
30 his discretion either forgo the debt altogether or accept a smaller sum in satisfaction thereof.

Community Welfare.

Minister's functions with respect to intellectually handicapped persons under guardianship.

272. (1) The Minister, in relation to an intellectually handicapped person under guardianship—

- 5 (a) shall provide for the accommodation, care and maintenance (excluding training) of the person unless—
- (i) the person is in the custody of another person pursuant to section 264 (5) or paragraph (c); or
- 10 (ii) the person is otherwise provided with adequate accommodation, care and maintenance;
- (b) may make payments to any person in whose custody the intellectually handicapped person under guardianship has been placed under paragraph (c) at such rates as may be prescribed;
- 15 (c) may, on such terms and conditions as may be prescribed or as the Minister, in a particular case, determines, place the person in the custody of the person in charge of a non-Government organisation, or any reputable person approved by the Minister, who is willing to undertake the custody of the person; or
- 20 (d) may arrange for the provision, without charge, to that person of any of the services referred to in section 260 (2) (d)–(h).

(2) The Minister, at any time, if he considers it necessary so to do in the interests of an intellectually handicapped person under guardianship may remove that person from the custody of a person and place him in the custody of some other person or place him in an appropriate facility.

25 (3) The Minister shall not exercise his power under subsection (2) in relation to an intellectually handicapped person under guardianship who is in the custody of another person pursuant to section 264 (5) except with the concurrence of a Tribunal.

30 (4) A person who has the custody of an intellectually handicapped person under guardianship under this section or section 264 (5) shall not, without the consent of the Minister and the concurrence of a Tribunal, place that person in the care of another person.

Community Welfare.

Rights and functions of custodian of intellectually handicapped person under guardianship.

5 **273.** A person in whose custody an intellectually handicapped person under guardianship is placed under section 264 (5) or 272 has the same rights and functions in respect of the intellectually handicapped person as he would have if the intellectually handicapped person were under the age of 14 years.

Court's power to recommend transfer of intellectually handicapped prisoner to control of Minister.

10 **274.** Where—

(a) a person is sentenced to penal servitude or imprisonment by a court; and

15 (b) the court is satisfied that the person is an intellectually handicapped person, whether or not to the degree referred to in section 264 (1) (c),

the court may recommend to the Minister that the person be transferred to the control of the Minister in accordance with section 224.

DIVISION 2.—Intellectually Handicapped Persons Centres and Residential Centres for Handicapped Persons.

20 **Interpretation: Pt. XI, Div. 2.**

275. (1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires—

25 “handicapped person” means a person who is senile, temporarily or permanently incapacitated for work, mentally ill, intellectually handicapped, physically handicapped, sensorily handicapped, chronically ill, of advanced age or suffering from any medical condition prescribed by the regulations, whether alone or in combination, and who, as a result, requires supervision or social habilitation;

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- 5 “intellectually handicapped persons centre” means any premises, including a day attendance centre, an activity centre or a sheltered workshop, at which a person provides care, treatment or training for 2 or more intellectually handicapped persons (disregarding any intellectually handicapped persons to whom the person is related, as referred to in subsection (2)) without providing residential care for them, but does not include any such premises that are exempt premises;
- 10 “licensed manager”, in relation to a licensed intellectually handicapped persons centre or a licensed residential centre for handicapped persons, means the person for the time being specified under section 278 (1) (d) in the licence for that centre;
- 15 “licensed premises” means premises specified under section 278 (1) (b) in a licence for an intellectually handicapped persons centre or a residential centre for handicapped persons;
- “proprietor”, in relation to premises, means—
- (a) where the premises are not leased—the owner or any joint owner of the premises; or
- 20 (b) where the premises are leased—the lessee or any joint lessee who is entitled to immediate possession of the premises;
- “residential centre for handicapped persons” means any premises comprising or in the nature of a boarding house or hostel—
- 25 (a) at which a person has residing with him, for fee, gain or reward, 2 or more handicapped persons, disregarding any handicapped persons who are related, as referred to in subsection (2), to any person residing at the premises who—
- (i) is of above the age of 18 years; and
- 30 (ii) is not a handicapped person; or
- (b) declared to be a residential centre for handicapped persons by an order in force under subsection (3),
- but does not include any such premises that are exempt premises.

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(2) For the purposes of this Part, a handicapped person is related to another person—

- 5 (a) if he is the husband, wife, father, mother, step-parent, child, step-child, grandparent, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by consanguinity or affinity) of the other person;
- (b) if he has been placed in the care or custody of the other person by a competent court; or
- (c) where the handicapped person is a child—
- 10 (i) if the other person is the guardian of the handicapped person;
- (ii) if the handicapped person has been placed in the care or custody of the other person by the Minister or the Director pursuant to Division 6 or 7 of Part VII, Part X or section
- 15 272; or
- (iii) if the handicapped person has been placed in the care of the other person, otherwise than as an adopted child, in accordance with the provisions of the Adoption of Children Act, 1965.

20 (3) The Minister may, by order in writing served on the proprietor or occupier of premises, declare those premises to be a residential centre for handicapped persons if there are residing at those premises 2 or more handicapped persons, disregarding any handicapped persons who are related, as referred to in subsection (2), to any person residing at those premises who—

- 25 (a) is of or above the age of 18 years; and
- (b) is not a handicapped person,

and may make such a declaration whether or not—

- (c) those premises comprise or are in the nature of a boarding house or hostel; or

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- (d) a person has the handicapped persons residing with him at those premises for fee, gain or reward.

Unauthorised person not to conduct intellectually handicapped persons centre or residential centre for handicapped persons.

- 5 **276. (1)** A person who conducts or advertises himself or holds himself out as being willing to conduct an intellectually handicapped persons centre or a residential centre for handicapped persons is guilty of an offence unless the premises on which the centre is conducted are licensed premises and he is the licensed manager of the licensed premises.
- 10 **(2)** The licensed manager of licensed premises is guilty of an offence if he contravenes or fails to comply with any condition of the licence for those premises that applies to him.
- (3)** For the purposes of subsection (1), but without affecting the generality of that subsection, a person who is in charge of an intellectually
15 handicapped persons centre or a residential centre for handicapped persons shall be deemed to have the conduct of the centre.
- (4)** A provision of this section does not, to the extent of the exemption, apply to a person exempted from the provision under section 283.

20 **Unlicensed premises not to be used as intellectually handicapped persons centre or residential centre for handicapped persons.**

- 277. (1)** The proprietor of premises on which—
- (a)** an intellectually handicapped persons centre is conducted is guilty
25 of an offence if the premises are not licensed as an intellectually handicapped persons centre; or
- (b)** a residential centre for handicapped persons is conducted is guilty of an offence if the premises are not licensed as a residential centre for handicapped persons.

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(2) The proprietor or, in the case of a licence granted as referred to in section 278 (2), the licensee of licensed premises is guilty of an offence if—

- 5 (a) the premises do not comply with any condition of the licence for the premises that applies to the premises; or
- (b) he contravenes or fails to comply with any condition of the licence for the premises that applies to him.

(3) The licensee of licensed premises shall produce the licence for the premises to an officer requesting him to do so.

10 Penalty: \$200.

(4) A provision of this section does not, to the extent of the exemption, apply to a person exempted from the provision under section 283.

Licences to specify certain particulars.

15 **278. (1)** A licence for an intellectually handicapped persons centre or a licence for a residential centre for handicapped persons shall specify—

- (a) the person to whom it is granted;
- (b) the premises to which it relates;
- (c) the kind of centre for which it is granted; and
- 20 (d) the person who is authorised by the licence to have the conduct of an intellectually handicapped persons centre or a residential centre for handicapped persons, as the case may be, on those premises.

(2) Notwithstanding subsection (1) (a), a licence may specify that it is granted to an unincorporated association but, in any such case, the applicant for the licence shall be deemed, for the purposes of this Division, to be the person to whom the licence is granted, unless a further person who has been appointed by the association to be the licensee gives written notice to the Minister of his appointment and of his full name and address, in which case, from the time the notice is received by the Minister, the further person so appointed shall be deemed, for the purposes of this Division, to be the person to whom the licence is granted.

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(3) Schedule 3 applies to and in respect of a licence for an intellectually handicapped persons centre and a licence for a residential centre for handicapped persons and an applicant for, the licensee under, and an approved person (within the meaning of that Schedule) under, any such
5 licence.

Removal of children from unlicensed residential centres for handicapped persons.

279. (1) Where—

- 10 (a) a child resides at a residential centre for handicapped persons conducted on licensed premises otherwise than by the licensed manager or conducted otherwise than on licensed premises;
- (b) an officer requests a parent of the child to remove the child from the residential centre for handicapped persons; and
- (c) the child is not forthwith so removed,

15 the child shall be deemed to be a child in need of care within the meaning of Division 6 of Part VII and, on application made to the Children's Court in accordance with the provisions of that Division, may be dealt with by the court in any manner in which the court may, under section 80 (1) (b) or (c), deal with a child who it is satisfied is in need of care.

20 (2) Subsection (1) does not apply in respect of a child who resides in a residential centre for handicapped persons and who is related, as referred to in section 275 (2), to the person who has the care of him at that centre.

Removal of children from unlicensed intellectually handicapped persons centres.

25 280. (1) Where a child is in attendance at an intellectually handicapped persons centre and an offence under section 276 (1) or (2) is being committed in relation to the centre (whether or not a person has been proceeded against for the offence), any person responsible for the child shall, on the request of an officer, forthwith cause the child no longer to attend the centre.

Penalty: \$500.

30 (2) Subsection (1) does not apply in respect of a child who is related, as referred to in section 275 (2), to the person who has the care of him at the intellectually handicapped persons centre where he attends.

*Community Welfare.***Assessment of certain removal expenses.**

281. (1) In this section, "court" means a court of petty sessions.

(2) Where a person has been convicted of an offence under section 277 (1) (b) of being the proprietor of premises on which a residential centre for handicapped persons is conducted and which are not licensed—

(a) a handicapped person—

(i) who resided in the unlicensed premises at the time when the person was convicted of the offence; and

10 (ii) who has, on or within 28 days after that time, moved from the premises to another residence; and

(b) the Director, if the Department has incurred expense in connection with the moving, referred to in paragraph (a) (ii), of a handicapped person from the unlicensed premises to another residence,

15 may, within 12 months after that time, apply to a court for an assessment of removal and other expenses under subsection (3).

(3) The court to which an application is made under subsection (2) may make an assessment of an amount that to the court seems a just and reasonable sum to compensate for the removal expenses, the cost of accommodation for the handicapped person for the period of 3 days immediately following his removal and any other expense in connection with the removal of the handicapped person incurred by the applicant or the Department, as the case may be, when the handicapped person moved from the unlicensed premises to another residence.

25 **(4)** Where a court makes an assessment under subsection (3), the assessment shall be deemed to be a judgment of the court for the amount in favour of the applicant for the assessment and against the person who was convicted of the offence in respect of which the application was made.

(5) A reference in subsection (2) or (4) to a person being convicted includes a reference to a person being dealt with under section 556A of the 30 Crimes Act, 1900.

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Notification of deaths at licensed premises.

282. (1) If a handicapped person dies at licensed premises, the licensed manager of the premises shall forthwith give notice of the death to—

- 5 (a) a member of the police force at the police station nearest the licensed premises; and
(b) the Director.

Penalty: \$500.

(2) Subsection (1) does not apply in respect of a handicapped person who is related, as referred to in section 275 (2), to the licensed manager of
10 the licensed premises concerned.

Exemptions.

283. (1) The Minister may, by notice served on a person, exempt the person, absolutely or subject to conditions and to the extent specified in the notice, from the operation of all or any of the provisions of section 276 (1)
15 or (2) or 277 (1), (2) or (3).

(2) A person on whom a notice has been served pursuant to subsection (1) is exempted from the operation of any provision specified in the notice, but only while he does not contravene or fail to comply with any condition so specified to which the exemption is subject and only to
20 the extent, if any, so specified.

(3) If he intends to revoke an exemption given under subsection (1), the Minister shall cause to be served on the person to whom the exemption was given a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption
25 on the grounds specified in the notice unless it has been established to his satisfaction that the exemption should not be revoked.

(4) When 28 days have expired after a notice has been served on a person pursuant to subsection (3), the Minister may, after considering any submissions made to him during that period by the person on whom the
30 notice was served, revoke the exemption by a further notice served on that person.

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PART XII.**APPEALS TO COMMUNITY WELFARE APPEALS TRIBUNAL.****Interpretation: Pt. XII.****284. In this Part—**

5 "President" means President of the Tribunal;

"Tribunal" means the Community Welfare Appeals Tribunal established pursuant to section 285.

Constitution of Community Welfare Appeals Tribunal.

285. (1) There shall be a Community Welfare Appeals Tribunal.

10 **(2)** Schedule 9 applies to and in respect of the Tribunal and the members thereof.

Appeals.

286. (1) An appeal may be made to the Tribunal against any of the following decisions:—

15 (a) a decision of the Minister or the Director, as the case may be—

(i) to grant a licence or authority;

(ii) to grant a consent;

(iii) to impose a condition on a licence or authority;

20 (iv) to revoke or vary a condition of, or to impose a further condition on, a licence or authority;

(v) to grant an application to vary a fostering authority; or

(vi) to suspend or revoke a licence or authority,

as referred to in clause 3, 4, 6, 7, 8 or 9 of Schedule 3;

25 (b) a decision of the Minister to make an order under section 44 (3) or 275 (3);

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- (c) a decision of the Minister to grant an exemption under the provisions of section 59 or 283, to limit the extent of any such exemption or to impose conditions on any such exemption;
- 5 (d) a decision of the Minister to declare a child to be a ward under section 108;
- (e) a decision of the Director to give an approval referred to in section 70 (1) (b);
- (f) a decision of the Minister—
- 10 (i) to make a delegation; or
- (ii) to revoke a delegation, under section 10;
- (g) a decision of the Minister or the Director, as the case may be, to refuse to make a decision referred to in paragraph (a), (b), (c), (d), (e) or (f) that he is empowered and has been requested to
- 15 make;
- (h) a decision of the Minister to terminate the custody of a ward under section 111 (1) (e);
- (i) a decision of the Minister to refuse to terminate his guardianship of a ward under section 111 (1) (g);
- 20 (j) a decision of the Minister or the Director belonging to a prescribed class of decisions.

(2) Where, under subsection (1), an appeal may be made against a decision to refuse to do any thing, an appeal may, in the prescribed circumstances, be made against the failure to make that decision by the

25 person empowered to make it as if that person had refused to make the decision.

Parties to appeals.

287. (1) An appeal against—

- 30 (a) a decision referred to in section 286 (1) may be made by any person who, in the opinion of the Tribunal, has a genuine concern in the subject-matter of the decision; or

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(b) a decision referred to in section 286 (1) (d), (e), (f), (h), (i) or (j) or a decision referred to in section 286 (1) (g) to refuse to make a decision referred to in section 286 (1) (d), (e) or (f) may, without limiting paragraph (a), be made by any person responsible for the child the subject of the decision.

(2) An appeal shall be made within a period of 28 days after the making of the decision appealed against or within such longer period as the Tribunal may determine, whether before or after the expiration of that period of 28 days.

(3) The parties to an appeal to the Tribunal with respect to a decision of the Minister or the Director are—

(a) the Minister or the Director, as the case may be;

(b) the person who appeals against the decision;

(c) any person, being a person who was entitled to, but did not, appeal against the decision, but only if he applies to the Tribunal to be made such a party and his application is approved by the Tribunal; and

(d) any person who may, if the decision of the Minister or the Director were reversed or varied, be entitled to appeal against the decision as so reversed or varied, but only if that person applies to the Tribunal to be made such a party and his application is approved by the Tribunal.

Lodging of material documents with Tribunal.

288. (1) A person who has made a decision that is subject to appeal to the Tribunal shall, within a period of 28 days after receiving notice of the application, lodge with the Tribunal such number of copies as is prescribed of every document or part of a document that is in his possession or under his control and is considered by him to be relevant to the determination of the appeal.

(2) If it appears to the Tribunal that a party to an appeal would or might suffer hardship if the period prescribed by subsection (1) for lodging with it the copies of the documents mentioned in that subsection is not shortened, the Tribunal may, upon request being made, as prescribed, by

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that party, make an order directing that those copies be lodged with the Tribunal within such period (being a period of less than 28 days) after the person who made the decision receives or received notice of the application as is specified in the order.

- 5 (3) Where the Tribunal is of the opinion that particular other documents or that other documents included in a particular class of documents may be relevant to the determination of the appeal, it may cause to be served on the person who made the decision a notice in writing stating that the Tribunal is of that opinion and requiring the person to lodge with the
10 Tribunal, within a time specified in the notice, the prescribed number of copies of each of those other documents that is in his possession or under his control, and a person on whom such a notice is served shall comply with the notice.

Operation and implementation of a decision pending appeal.

- 15 **289. (1)** Subject to this section, an appeal to the Tribunal does not affect the operation of the decision appealed against or prevent the taking of action to implement the decision.

 (2) The Tribunal or the President may, upon request being made, as prescribed, by a party to an appeal to the Tribunal, if the Tribunal or
20 President is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the determination of the appeal, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the appeal relates or a part of that decision as the Tribunal or President considers appropriate
25 for the purpose of securing the effectiveness of the hearing and determination of the appeal.

 (3) Where an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal or President may, upon request being made, as
30 prescribed, by a party to the appeal, make an order varying or revoking the firstmentioned order.

 (4) Subject to subsection (5), the Tribunal or President shall not—
 (a) make an order under subsection (2) unless the person who made
35 the decision to which the appeal relates has been given a reasonable opportunity to make a submission to the Tribunal or President, as the case may be, in relation to the matter; or

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(b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)) unless—

5 (i) the person who made the decision to which the appeal relates;

(ii) the person who requested the making of the order under subsection (2); and

10 (iii) if the order under subsection (2) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the last-mentioned order or orders,

have been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter.

15 (5) Subsection (4) does not prohibit the Tribunal or President from making an order without giving to a person referred to in that subsection a reasonable opportunity to make a submission to the Tribunal or President in relation to a matter if the Tribunal or President is satisfied that, by reason of the urgency of the case or otherwise, it is not practicable to give that
20 person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the appeal relates, the order does not come into operation until a notice setting out the terms of the order is served on that person.

(6) An order in force under subsection (2) (including an order that
25 has previously been varied on one or more occasions under subsection (3))—

(a) is subject to such conditions as are specified in the order; and

(b) has effect until—

30 (i) where a period for the operation of the order is specified in the order—the expiration of that period or, if the appeal is decided by the Tribunal before the expiration of that period, the decision of the Tribunal on the appeal comes into operation; or

35 (ii) if no period is so specified—the decision of the Tribunal on the appeal comes into operation.

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Appeals to Supreme Court from decisions of the Tribunal.

290. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in that proceeding.

5 (2) Where a person has appealed to the Tribunal against a decision, or has applied to be made a party to a proceeding before the Tribunal, and the Tribunal decides that the person was not entitled so to appeal or has not approved his application, the person may appeal to the Supreme Court from the decision of the Tribunal.

10 (3) An appeal by a person under subsection (1) or (2) shall be instituted within the period of 28 days after the day on which a document setting out the terms of the decision of the Tribunal is furnished to the person or within such further time as the Supreme Court (whether before or after the expiration of that period) allows.

15 (4) The Supreme Court shall hear and determine the appeal and may make such order as it thinks appropriate by reason of its decision.

20 (5) Without limiting by implication the generality of subsection (4), the orders that may be made by the Supreme Court on an appeal include an order affirming or setting aside the decision of the Tribunal and an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the Tribunal in accordance with the directions of the Court.

Effect of decision of the Tribunal.

25 **291.** Subject to section 290, a decision of the Tribunal with respect to proceedings before it shall be final and shall be given effect to as if it were the decision of the person in respect of whose decision the proceedings were brought.

Power of entry.

30 **292.** Section 296 applies to and in respect of a member of the Tribunal in the same way as it applies to and in respect of an officer but as if the powers conferred by that section were conferred on the member for the purpose of his functions as such a member instead of for the purposes specified in section 296 (1) (a)-(d).

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PART XIII.

MISCELLANEOUS.

Assessments of children.

- 293.** (1) The Minister shall, whenever requested to do so—
- 5 (a) by any court before which a person, being a child, is charged with any offence;
- (b) by the Children's Court in respect of a person; or
- (c) by an Intellectually Handicapped Persons Review Tribunal established pursuant to Schedule 8 in respect of a person,
- 10 cause a report to be prepared in relation to the person setting out the details and results of investigation into the antecedents, home environment, companions, education, school attendance, habits, recreation, character, reputation, disposition, medical history and physical or mental characteristics and defects, if any, of the person.
- 15 (2) Notwithstanding the provisions of any other Act or of any rule of law or practice to the contrary, a report referred to in subsection (1) shall not, if tendered, be open to inspection other than by the court in which it is tendered, a court of superior jurisdiction, an Intellectually Handicapped Persons Review Tribunal established pursuant to section 261, in which it is
- 20 tendered, and, unless either of those courts or the Tribunal, as the case may be, otherwise directs, by officers of either of those courts or such a Tribunal, officers, the prosecutor (if any) or any party in any proceedings in which the report is tendered or a barrister or solicitor (if any) appearing in any such
- 25 proceedings for the person to whom the report relates or, in the case of an intellectually handicapped person to whom the report relates, his representative, as defined in section 258 (1).

Expediting trials and appeals.

- 294.** (1) The superintendent or other person in charge of a facility in which any child is detained for trial or appeal shall, within the prescribed
- 30 time after the end of each month of the year, furnish returns, in accordance with subsection (2), containing the prescribed particulars with respect to all children so detained at the end of that month.

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(2) A return referred to in subsection (1) relating to children detained for trial in or appeal to—

- (a) the Supreme Court shall be made to the Chief Justice of the Supreme Court;
- 5 (b) the District Court shall be made to the Chief Judge of the District Court; or
- (c) the Children's Court shall be made to the senior member of the Children's Court.

(3) With respect to a child the subject of a return referred to in
10 subsection (1) made—

- (a) to the Chief Justice of the Supreme Court, any Judge of that court;
- (b) to the Chief Judge of the District Court, any Judge of that court;
or
- 15 (c) to the senior member of the Children's Court, any member of the Children's Court or stipendiary magistrate exercising the jurisdiction of the Children's Court,

may give such directions with respect to expediting the prosecution of the trial or appeal of the child as he thinks fit.

(4) Disobedience of any directions given under subsection (3) may
20 be punished as a contempt of court and, in the case of directions given by a stipendiary magistrate, as if the contempt had been committed in the face of the Children's Court.

Service of notices, etc.

25 **295.** (1) Any notice or other instrument required or authorised by this Act to be served on a person is sufficiently served if the notice or other instrument (or a copy thereof) is—

- (a) delivered personally to the person;
- 30 (b) left with a person who is apparently not an intellectually handicapped person, as defined in section 258 (1), but who is apparently of or above the age of 16 years at, or sent by prepaid post to, the address last known to the Director of the person on whom the notice or other instrument is to be served; or

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(c) where no address of the person is known to the Director, published or otherwise dealt with as may be prescribed,

and, where it is—

5 (d) sent by post as referred to in paragraph (b), it shall be deemed to have been served at the time it would be delivered in the ordinary course of post; or

(e) published or otherwise dealt with as referred to in paragraph (c), it shall be deemed to have been served at such time as may be prescribed.

10 (2) Subsection (1) does not affect any other provision of this Act relating to the service of notices or other instruments.

Power of entry.

296. (1) For the purposes of—

15 (a) making an inquiry in relation to an application under this Act with respect to any premises;

(b) ensuring that the provisions of this Act and the regulations with respect to any licensed premises and of any conditions imposed on a licence or authority are being complied with;

20 (c) ensuring that the conditions, if any, relating to premises to which any exemption from any of the provisions of this Act is subject are being complied with; or

(d) inspecting any premises subject to inspection under section 83,

any officer or, in the case of premises referred to in paragraph (d), any officer or other person appointed as referred to in section 83 (1) or (2) (a),
25 may, at any time, without warrant, enter premises and inspect them and observe and converse with any person apparently residing at the premises.

(2) In exercising his powers under subsection (1), an officer or other person appointed as referred to in section 83 (1) or (2) (a) may be accompanied by a medical practitioner or medical practitioners or a member
30 or members of the police force and any such medical practitioner or medical practitioners may inspect the premises and observe, examine and converse with any person apparently residing at the premises.

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(3) Nothing in subsection (2) authorises the examination of—

- (a) a child in contravention of section 49 or 50; or
- (b) an adult against his will.

(4) A person shall not refuse or fail to admit an officer or other
5 person exercising his power of entry under subsection (1) or (2).

Penalty: \$500.

(5) Upon complaint made on oath by an officer or a member of
the police force that the officer or member of the police force suspects on
reasonable grounds that a provision of this Act or the regulations has been
10 or is being contravened at any premises, a stipendiary magistrate may issue
a warrant authorising an officer or officers named in the warrant, together
with any medical practitioner or medical practitioners so named (any of
whom may, if the warrant so provides, be accompanied by any member or
members of the police force), at any time or times within 14 days from
15 the date of issue of the warrant to enter (if need be by reasonable force) the
premises described in the warrant and to inspect the premises for evidence of
such a contravention.

(6) A member of the police force accompanying an officer as
referred to in subsection (5) may take all reasonable steps to assist the
20 officer in the exercise of his functions under this Act or the regulations.

(7) A reference in this section to an officer includes, in relation to
any power conferred by this section with respect to a residential centre for
handicapped persons, as defined in section 275 (1), a member of the Health
Commission of New South Wales and any officer or temporary employee,
25 within the meaning of the Public Service Act, 1979, employed in the
performance of the functions of that Commission and authorised by that
Commission for the purposes of this section.

Obstruction of officer.

297. A person who wilfully hinders, obstructs, delays, assaults or
30 threatens with violence any person in the exercise of his functions under this
Act is guilty of an offence.

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Person falsely representing himself as an officer.

298. A person, not being an officer, who, for any fraudulent purpose—

(a) assumes or uses the designation of officer or falsely represents himself to be officially associated in any capacity with the Department;

5 or

(b) uses any designation which he previously held in the Department, is guilty of an offence.

Penalty for false or misleading statements.

299. A person shall not, in an application under this Act, or in connection with an inquiry made by an officer in relation to any such application—

(a) make a statement; or

(b) furnish information,

that he knows to be false or misleading in a material particular.

Penalty: \$500.

15 Disclosure and misuse of information.

300. A person who discloses any information obtained in connection with the administration or execution of this Act or the regulations otherwise than—

20 (a) with the consent of the person from whom the information was obtained and to whom the information relates;

(b) in connection with the administration or execution of this Act or the regulations, as the case may be;

25 (c) in accordance with the order of a court, or of any other body or person authorised by law to examine witnesses, made in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing;

(d) in accordance with a requirement imposed under the Ombudsman Act, 1974; or

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(e) with other lawful excuse,
is guilty of an offence.

Unauthorised removal of children and other persons from care.

301. A person who, without lawful excuse, removes a child or other
5 person from the care of a person into whose care or custody the child or other
person has been placed pursuant to any provision of this Act, or causes or
procures a child or other person to be so removed, is guilty of an offence.

Ill-treatment of children and intellectually handicapped persons.

302. A person who abuses a child or intellectually handicapped person,
10 as defined in section 258 (1), or causes or procures a child or any such
person to be abused, is guilty of an offence.

Neglect to provide for children and intellectually handicapped persons.

303. A person, whether or not the parent of the child or intellectually
handicapped person, as defined in section 258 (1), who, without reasonable
15 excuse, neglects to provide adequate and proper food, nursing, clothing,
medical aid or lodging for a child or any such person in his care is guilty
of an offence.

Penalties.

304. A person guilty of an offence under this Act is, for every such
20 offence, liable to a penalty not exceeding the penalty expressly imposed and,
if no penalty is so imposed, to a penalty not exceeding \$1,000 or to imprison-
ment for a period not exceeding 12 months or to both such penalty and
imprisonment.

Proceedings for offences.

25 **305.** Subject to this Act, proceedings for an offence under this Act or
the regulations may be taken before a court of petty sessions held before a
stipendiary magistrate sitting alone.

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Contempt of court.

306. A person shall not, during any proceedings before a Children's Court, commit contempt of the court.

Penalty: \$200 or imprisonment for 10 days.

5 Evidence of young children.

307. (1) Where in any proceedings against any person for an offence against this Act or the regulations relating to a child, a child tendered as a witness does not, in the opinion of the court, understand the nature of an oath, the evidence of the child may be received though not given upon oath if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) The evidence of the child, though not given on oath, but otherwise taken and reduced into writing as a deposition, shall be deemed to be a deposition to all intents and purposes.

(3) Where in any proceedings, referred to in subsection (1), evidence is received as referred to in that subsection, the person charged with the offence to which the proceedings relate shall not be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating the accused.

(4) A child whose evidence, received as referred to in subsection (1), is false is guilty of an offence and liable to a penalty not exceeding \$100.

(5) Where a justice is satisfied by the evidence of a medical practitioner that the attendance before a court of a child to whom an offence against this Act or the regulations relates would be injurious or dangerous to his health, the justice may take in writing the statement of the child in pursuance of section 406 of the Crimes Act, 1900, as if the child were dangerously ill, whereby his evidence would probably be lost if not forthwith taken.

(6) Where in any proceedings for an offence against this Act or the regulations relating to a child, the court is satisfied by the evidence of a medical practitioner that the attendance before the court of the child would be injurious or dangerous to his health, any deposition taken under section 406 of the Crimes Act, 1900, or any statement of the child taken under this

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section, may be read in evidence, and shall have effect in the like manner as if it were proved that the child were so ill as not to be able to travel, or (in the case of any such statement) that there was no reasonable probability that the child would ever be able to travel or give evidence, but the same
5 conditions shall apply as in the case of the reception of evidence under subsections (1), (2), (3) and (4).

(7) Where in any proceedings for an offence against this Act or the regulations relating to a child, the court is satisfied by the evidence of a medical practitioner that the attendance for the purpose of giving evidence
10 before the court of the child would be injurious or dangerous to his health, and it is further satisfied that the evidence of the child is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Procedural matters.

15 **308. (1)** In the absence of proof to the contrary, the authority of the Minister or any officer to exercise any function conferred or imposed on the Minister or an officer by or under this Act or to take any proceedings for the purposes of this Act shall be presumed.

20 (2) At the hearing of any complaint, application, proceeding or information relating to any child or intellectually handicapped person under guardianship, as defined in section 258 (1), or of any appeal or proceedings or further proceedings in respect thereof, the Minister or any officer authorised by the Minister for the purpose of this subsection shall be entitled to appear and to be heard.

25 (3) An averment in any complaint or information made or laid under this Act—

- (a) that any proclamation or regulation, purporting to have been made under this Act, has been published in the Gazette and is in force;
- (b) that any other instrument, purporting to have been made under
30 this Act and specified in the averment was or was not, at a time or during a period so specified, in force under this Act and was or was not, made, granted or issued subject to terms or conditions so specified;

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- (c) that any officer has been appointed, authorised or directed, for the purposes of this Act or the regulations, by the Minister as stated in the averment;
- 5 (d) that any person was, on a date specified in the averment, the delegate of the Minister or the Director, duly appointed under this Act;
- (e) that any person was, on a date specified in the averment, a ward or subject to a control order or an order made under section 224;
- 10 (f) that any person was, on a date specified in the averment, an intellectually handicapped person under guardianship, as defined in section 258 (1); or
- (g) that any person was, on a date specified in the averment, an officer, shall be prima facie evidence of the facts alleged.

Bail Act, 1978, to prevail.

- 15 **309.** Except where expressly provided, the Bail Act, 1978, shall prevail to the extent of any inconsistency between that Act and this Act.

Children to whom A.C.T. or Norfolk Island laws apply.

310. (1) The Minister may enter into an agreement with a Minister of State of the Commonwealth with respect to—

- 20 (a) any children; or
- (b) any persons of or above the age of 18 years but under the age of 21 years who are alleged to have committed or who have committed offences when they were under the age of 18 years,

25 being children or other persons who have been dealt with under a law that applies in the Australian Capital Territory or Norfolk Island and that relates to the welfare or punishment of children or any such other persons.

(2) Where, under an agreement referred to in subsection (1), provision is made for the transfer to New South Wales of any children or persons to whom the agreement applies and for any such children or persons

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to be dealt with in accordance with any provisions of this Act or accorded any status for the purpose of any provisions of this Act, the children or persons shall be so dealt with and shall be treated as having that status.

Regulations.

- 5 **311. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—
- 10 (a) any council, committee, subcommittee, panel, tribunal or other body established by or under this Act and the members and functions thereof;
- (b) the conduct of facilities and the control and regulation, but not the disciplining, of persons accommodated or detained therein;
- 15 (c) the control and regulation of the Home Care Service and any branch committee thereof;
- (d) the Community Disaster Relief Fund established under section 40 (1);
- (e) the Community Welfare Fund;
- 20 (f) the control and regulation of child care services and authorised supervisors of licensed child care services;
- (g) the control and regulation of residential child care centres and licensed managers of licensed residential child care centres;
- (h) the control and regulation of private fostering agencies and principal officers of authorised private fostering agencies;
- 25 (i) the control and regulation of holders of fostering authorities;
- (j) the control and regulation of the employment of children;
- (k) the control and regulation of children engaged in trading or carrying on any prescribed occupation in a public place;
- (l) the control and regulation of wards;

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- (m) the practice and procedure of the Children's Court;
- (n) providing for the circumstances in which a person other than an officer—
- 5 (i) may notify a court of arrangements as referred to in section 143 (a);
- (ii) may prepare a report as referred to in section 143 (b); or
- (iii) may be assigned, under section 150, by the Director in respect of the administration of a children's community service order;
- 10 (o) prescribing requirements to be complied with by persons in respect of whom children's community service orders are in force;
- (p) providing for the appointment and payment of supervisors in respect of children's community service orders to supervise persons in the performance of community service work;
- 15 (q) regulating the conduct of supervisors in respect of children's community service orders and persons in respect of whom children's community service orders are in force;
- (r) providing for the health and safety of supervisors in respect of children's community service orders and persons in respect of whom children's community service orders are in force;
- 20 (s) prescribing the maximum number of hours of community service work that persons in respect of whom children's community service orders are in force may be required to perform on any one day;
- (t) prescribing periods to be included or excluded in computing the number of hours of community service work performed by persons in respect of whom children's community service orders are in force;
- 25 (u) providing for the payment of travelling and other expenses in connection with the performance of community service work;
- (v) the remission of the period for which a person to whom section 224 applies is to be detained pursuant to an order under section 138 (a) or 224 (1);
- 30 (w) the conduct of training centres;

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- (x) payments to persons subject to control;
- (y) the control and regulation of intellectually handicapped persons centres and licensed managers of licensed intellectually handicapped persons centres;
- 5 (z) the control and regulation of residential centres for handicapped persons and licensed managers of licensed residential centres for handicapped persons;
- (aa) registers for the purposes of this Act; and
- 10 (bb) the practice and procedure of an Intellectually Handicapped Persons Review Tribunal or the Community Welfare Appeals Tribunal.

(2) Except in so far as the context or subject-matter otherwise indicates or requires, an expression used in a provision of this section or, without limiting the Interpretation Act, 1897, in a regulation made pursuant
15 to such a provision has the same meaning as it has in the relevant provisions of this Act relating to the subject-matter of that provision.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- 20 (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

25 (4) A regulation may impose a penalty not exceeding \$500 for any offence against a regulation.

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SCHEDULE 1.

(Secs. 19, 20, 23.)

**COMMUNITY WELFARE ADVISORY COUNCIL, NEW SOUTH WALES ADVISORY COUNCIL ON
THE HANDICAPPED AND COMMUNITY SERVICES TRAINING COUNCIL.**

5 Interpretation: Sch. 1.

1. (1) In this Schedule, "Council" means the Community Welfare Advisory Council, the New South Wales Advisory Council on the Handicapped or the Community Services Training Council.

(2) In this Schedule, a reference to a member of a Council includes, subject to the regulations, a reference to the member's alternative appointed and acting in accordance with the regulations made for the purposes of clause 10 (1) of Schedule 2.

Community Welfare Advisory Council.

2. The Community Welfare Advisory Council shall consist of such number of persons, appointed by the Governor, as the Governor thinks fit, who shall be members of, or persons employed by, organisations concerned in community welfare or social development, officers of Government departments concerned in community welfare or social development or persons otherwise experienced in community welfare or social development.

New South Wales Advisory Council on the Handicapped.

3. The New South Wales Advisory Council on the Handicapped shall consist of such number of persons, appointed by the Governor, as the Governor thinks fit, who shall be members of, or persons employed by, organisations concerned especially in the welfare of handicapped persons, officers of Government departments concerned especially in the welfare of handicapped persons or persons otherwise experienced in the welfare of handicapped persons.

Community Services Training Council.

4. (1) The Community Services Training Council shall consist of 12 members appointed by the Governor and shall include at least 1 person from each of the following bodies or classes of persons:—

- (a) Government departments concerned in community welfare;
- (b) non-Government organisations engaged in the provision of community welfare services;

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SCHEDULE 1—*continued.*COMMUNITY WELFARE ADVISORY COUNCIL, NEW SOUTH WALES ADVISORY COUNCIL ON
THE HANDICAPPED AND COMMUNITY SERVICES TRAINING COUNCIL—*continued.*

- (c) tertiary training institutions;
- 5 (d) students engaged in courses relating to community welfare or social development;
- (e) trade unions;
- (f) such other bodies or classes of persons as may be prescribed.
- (2) Of the members of the Community Services Training Council—
- 10 (a) 3 shall be officers nominated by the Minister; and
- (b) the remaining members shall be persons nominated in accordance with clause 10.

Age of appointees.

- 15 5. A person of or above the age of 65 years shall not be appointed as a member of a Council.

Chairman.

6. One of the members of a Council shall, by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed as Chairman of the Council.

20 Term of office.

7. A member of a Council shall, subject to this Schedule and the regulations, hold office for such term, not exceeding 4 years, as is specified in the instrument of his appointment and is, if otherwise qualified, eligible for reappointment.

Filling casual vacancy.

- 25 8. On the occurrence of a vacancy in the office of a member of a Council before the expiration of the term for which he was appointed, the Governor may appoint a person to the vacant office for the balance of his predecessor's term of office.

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SCHEDULE 1—*continued.*COMMUNITY WELFARE ADVISORY COUNCIL, NEW SOUTH WALES ADVISORY COUNCIL ON
THE HANDICAPPED AND COMMUNITY SERVICES TRAINING COUNCIL—*continued.***Qualification of person filling casual vacancy.**

- 5 9. A person appointed under clause 8 to a vacant office in the Community Services
Training Council—
- (a) shall, where the vacancy is in the office of a person who was nominated for
membership by the Minister, be an officer nominated by the Minister; and
 - (b) shall, if his predecessor was the only member appointed from a body or
10 class of persons referred to in clause 4 (1), be a person within that body
or class nominated in accordance with the regulations.

Nominations.

10. (1) For the purposes of the appointment of the members of the Community
Services Training Council referred to in clause 4 (2) (b) or 9 (b), nominations may
15 be submitted to the Minister in accordance with regulations prescribing—
- (a) persons who, or bodies or other classes of persons that, may submit
nominations;
 - (b) the number of nominations that may be submitted by each person, body or
class so prescribed; and
 - 20 (c) the times within which the nominations may be submitted.

(2) The regulations may provide for the nomination of a number of persons in
excess of the number of members of the Community Services Training Council that
may be appointed.

Removal from office.

- 25 11. The Governor may, for any cause that to him seems sufficient, remove a member
of a Council from office.

Casual vacancy.

12. A member of a Council shall be deemed to have vacated his office—
- (a) if he dies;
 - 30 (b) if he resigns his office by writing under his hand addressed to the Governor;

*Community Welfare.*SCHEDULE 1—*continued.*COMMUNITY WELFARE ADVISORY COUNCIL, NEW SOUTH WALES ADVISORY COUNCIL ON THE HANDICAPPED AND COMMUNITY SERVICES TRAINING COUNCIL—*continued.*

- 5 (c) if he absents himself from 4 consecutive meetings of the Council without leave of the Council;
- (d) if he 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;
- (e) upon his attaining the age of 65 years;
- 10 (f) if he is removed from office by the Governor; or
- (g) if, being a member of the Community Services Training Council nominated for membership by the Minister, he ceases to be an officer.

Public Service Act, 1979, not to apply.

- 15 13. The Public Service Act, 1979, does not apply to or in respect of the appointment of a person as a member of a Council, and a person so appointed is not, in his capacity as such a member, subject to that Act while he holds office as such a member.

SCHEDULE 2.

(Secs. 19–21, 23.)

PROCEDURE OF CERTAIN COUNCILS AND COMMITTEES.

20 **Interpretation: Sch. 2.**

1. (1) In this Schedule—

“Committee” means a committee established under section 21 (1);

- 25 “Council” means the Community Welfare Advisory Council, the New South Wales Advisory Council on the Handicapped or the Community Services Training Council.

(2) In this Schedule, a reference to a member of a Council or Committee includes, subject to the regulations, a reference to the member’s alternative appointed and acting in accordance with the regulations made for the purposes of this Schedule.

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SCHEDULE 2—*continued.*

PROCEDURE OF CERTAIN COUNCILS AND COMMITTEES—*continued.*

Majority decisions.

2. Questions arising at a meeting of a Council or Committee shall be determined by a majority of votes of the members present and voting.

Temporary Chairman.

3. In the absence of the Chairman from any meeting of a Council or Committee, the members present shall appoint one of their number to preside at that meeting.

Second vote of Chairman.

10 4. The Chairman or member presiding at a meeting of a Council or Committee shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

Quorum.

15 5. A majority of members of a Council or Committee shall form a quorum and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Council or Committee and shall have and may exercise all the functions of that Council or Committee.

Director may attend proceedings of Community Welfare Advisory Council.

20 6. The Director may attend and participate, but not vote, in the proceedings and deliberations of the Community Welfare Advisory Council.

Meetings.

7. (1) The frequency of meetings of a Council or Committee and the procedures for the conduct of business at those meetings shall, subject to subclause (2) and any directions by the Minister, be as determined by the Council or Committee.

25 (2) Meetings of the Community Services Training Council shall be convened so that at least 6 meetings are held in every year.

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SCHEDULE 2—*continued.*

PROCEDURE OF CERTAIN COUNCILS AND COMMITTEES—*continued.*

Minutes.

8. The Chairman of a Council or Committee shall cause minutes of the proceedings and decisions at each meeting of the Council or Committee to be kept and shall furnish the Director with a copy of those minutes as soon as practicable after each meeting.

Remuneration.

9. A member of a Council or Committee (other than a public servant) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

Alternative members.

10. The regulations may make provision for or with respect to the appointment of alternative members for members of a Council or Committee and the exercise by them of the functions of those members.

Subcommittees.

11. (1) A Council or Committee may establish subcommittees (whether or not consisting of members of the Council or Committee) for the purpose of advising the Council or Committee upon such matters within the scope of the Council's or Committee's functions as may be referred to the subcommittees by the Council or Committee.

(2) The convenor of a subcommittee shall be a member of the Council or Committee by which it is established.

Application of Schedule to subcommittees.

12. The provisions of this Schedule apply to a subcommittee of a Council or Committee as if it were that Council or Committee.

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SCHEDULE 2—*continued.*

PROCEDURE OF CERTAIN COUNCILS AND COMMITTEES—*continued.*

Representatives of departments and authorities.

- 5 13. A Council or Committee may invite representatives of Government departments and authorities, Commonwealth Government departments and authorities and private utility undertakings to participate, but not vote, in the proceedings and deliberations of the Council or Committee.

Secretary.

- 10 14. The secretary of a Council or Committee shall be an officer designated by the Director.

SCHEDULE 3.

(Secs. 64, 69, 71, 278.)

PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES.

Interpretation: Sch. 3.

- 15 1. In this Schedule—

“approved person”, in relation to—

- (a) a licence for a child care service, means the authorised supervisor under the licence;
- 20 (b) a fostering agency authority, means the principal officer under the authority; or
- (c) a licence for a residential child care centre, an intellectually handicapped persons centre or a residential centre for handicapped persons, means the licensed manager under the licence;

“authority” means a fostering agency authority or a fostering authority.

*Community Welfare.*SCHEDULE 3—*continued.*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES—*continued.***Eligible applicants.**

2. A person is not eligible to make an application for a licence for a residential
5 child care centre, an intellectually handicapped persons centre or a residential centre
for handicapped persons unless he is the proprietor of the premises in respect of which
the licence is applied for.

Grant of licences or authorities.

3. (1) Where a person makes an application to the Minister for a licence or
10 authority, the Minister shall cause an inquiry to be made with respect to the applica-
tion by officers and, in the case of an application for a licence for a residential centre
for handicapped persons, by representatives from the Health Commission of New
South Wales and a report on the application to be made and furnished to him by an
officer.

- 15 (2) Upon receipt of the report, the Minister shall—
(a) grant the licence or authority applied for to the applicant; or
(b) cause to be served on the applicant for the licence or authority a notice
stating that, when 28 days have expired after service of the notice, the
20 Minister intends to refuse the licence or authority on the grounds specified
in the notice unless it has been established to his satisfaction that the licence
or authority should not be refused.

- (3) When 28 days have expired after a notice has been served under subclause
(2) (b) on an applicant for a licence or authority, the Minister shall, after considering
any submissions made to him during that period by the applicant—

- 25 (a) grant the licence or authority applied for to the applicant; or
(b) refuse the licence or authority and cause to be served on the applicant a
notice stating the grounds on which the licence or authority has been refused.

- (4) Without limiting the Minister's power to refuse a licence, the Minister may
refuse a licence on the ground that, in the locality in which it is proposed—

- 30 (a) to provide the child care service;
(b) to conduct the residential child care centre;
(c) to conduct the intellectually handicapped persons centre; or

Community Welfare.

SCHEDULE 3—*continued.*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES—*continued.*

(d) to conduct the residential centre for handicapped persons,

there are already available adequate child care services, residential child care centres, 5 intellectually handicapped persons centres or residential centres for handicapped persons, as the case may be, of a similar kind to that in relation to which the licence is applied for.

Change of approved persons under licences or fostering agency authorities.

4. (1) A licensee or holder of a fostering agency authority may apply in or to the 10 effect of the prescribed form for the Minister's consent to the replacement of the approved person under the licence or authority by another person.

(2) When he receives an application under subclause (1), the Minister shall, by notice served on the applicant, the approved person and the other person specified in the application—

15 (a) if he considers the other person suitable to act as the approved person under the licence or fostering agency authority—consent to the other person becoming the approved person under the licence or authority; or

(b) refuse the application.

(3) When the Minister has consented under subclause (2) to another person 20 becoming the approved person under a licence or fostering agency authority—

(a) any person who was the approved person under the licence or authority immediately before the consent was given ceases to be the approved person under the licence or authority; and

25 (b) the other person shall be deemed to be the person specified under section 64 (1) (c) or (2) (c), 69 (1) (b) or 278 (1) (d), as the case may be, in the licence or authority.

(4) A notice served for the purpose of giving a consent under subclause (2) shall specify any conditions, other than prescribed conditions, which are in force when 30 the notice is served and to which the licence or fostering agency authority to which it relates is subject.

Duration of licences and fostering agency authorities.

5. Subject to this Schedule, a licence or fostering agency authority shall be in force for such period, not exceeding 3 years, as is specified in the licence or authority, commencing on the date it is granted or such later date as is specified in the licence 35 or authority, as the case may be, and, if an application for a further licence or

*Community Welfare.*SCHEDULE 3—*continued.*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES—*continued.*

fostering agency authority in relation to the same child care service, residential child care centre, intellectually handicapped persons centre, residential centre for handicapped persons or private fostering agency, as the case may be, as that to which the licence or authority relates is made by the licensee under the licence or the holder of the authority within that period, until the application is finally dealt with.

Conditions of licence or authority.

6. A licence or authority is subject—
- 10 (a) to any condition prescribed for licences or authorities or for a class of licences or authorities to which it belongs; and
- (b) to any other condition in force for the time being, being a condition that the Minister thought fit to impose on the licence or authority and that was—
- 15 (i) specified in the licence or authority when it was granted; or
- (ii) subsequently imposed on the licence or authority under clause 7.

Revocation, variation or addition of conditions on licences and authorities.

7. (1) If he intends to revoke or vary any condition of a licence or authority or to impose a further condition on a licence or on an authority, the Minister shall cause to be served on—
- 20 (a) the licensee under the licence or the holder of the authority; and
- (b) the approved person, if any, under the licence or authority,
- a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence or authority specified in the notice or to impose on the licence or authority a further condition specified in the notice, as the
- 25 case may be, unless it has been established to his satisfaction that he should not do so.
- (2) When 28 days have expired after notices have been served under subclause (1), the Minister may, after considering any submissions made to him during that period by the person or persons on whom the notices were served—
- (a) revoke or vary the condition specified in the notices; or
- 30 (b) impose the further condition, specified in the notice, on the licence or authority to which the notices relate,
- by a further notice served on that person or those persons.

Community Welfare.

SCHEDULE 3—*continued.*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES—*continued.*

(3) Notwithstanding subclauses (1) and (2), where the licensee under a licence or the holder of an authority has requested that a condition of the licence or authority be revoked or varied or that a further condition be imposed on the licence or authority, the Minister may, by notice served on the licensee or the holder of the authority and the approved person, if any, under the licence or authority—

- (a) revoke or vary the condition; or
- (b) impose the further condition,

10 as the case may require.

Application for variation of matters specified in a fostering authority.

8. Any matter specified in a fostering authority pursuant to section 71 (1) (b)–(e) shall, for the purposes of clause 7, be deemed to be a condition of the fostering authority.

Suspension and revocation of licence or authority.

15 9. (1) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a licence, are that—

- (a) the licensee under the licence has requested that the licence be suspended or revoked;
- 20 (b) either the licensee or the approved person under the licence is no longer a fit and proper person to be concerned in the provision of the child care service or the conduct of the residential child care centre, intellectually handicapped persons centre or residential centre for handicapped persons to which the licence relates;
- 25 (c) either of those persons has contravened or failed to comply with a provision of this Act or of the regulations that applies to him;
- (d) in the case of a licence for a residential child care centre, an intellectually handicapped persons centre or a residential centre for handicapped persons—
 - (i) the licensed premises do not comply with a provision of this Act or of the regulations or a condition of the licence that applies to them;
 - 30 (ii) the licensed premises are not being used as a residential child care centre, an intellectually handicapped persons centre or a residential centre for handicapped persons, as the case may be;

Community Welfare.

SCHEDULE 3—*continued.*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES—*continued.*

- 5 (iii) the licensee (not being a person deemed to have been granted the licence under section 64 (3) or 278 (2)) is not the proprietor of the licensed premises; or
- (iv) the licensed manager does not conduct the residential child care centre, the intellectually handicapped persons centre or the residential centre for handicapped persons, as the case may be;
- 10 (e) in the case of a licence for a child care service, any premises on which the child care service is provided do not comply with any provision of this Act or of the regulations or a condition of the licence that applies to them; or
- (f) in the case of a licence for a child care service, the authorised supervisor under the licence does not have the overall supervision of the provision of the child care service to which the licence relates.
- 15 (2) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a fostering agency authority, are that—
- (a) the authorised private fostering agency under the authority has requested that the authority be suspended or revoked;
- 20 (b) either the authorised private fostering agency or the principal officer under the authority is no longer fit and proper to be concerned in the carrying on of private fostering services; or
- (c) either of those persons has contravened or failed to comply with a provision of this Act or of the regulations that applies to him.
- 25 (3) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a fostering authority, are that—
- (a) the holder of the authority has requested that the authority be suspended or revoked;
- (b) the holder of the authority is no longer a fit and proper person to hold the authority; or
- 30 (c) the holder of the authority has contravened or failed to comply with a provision of this Act or of the regulations that applies to him.
- (4) If he intends to suspend or revoke a licence or an authority, the Director shall cause to be served on—
- (a) the licensee under the licence or the holder of the authority; and

*Community Welfare.*SCHEDULE 3—*continued.*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES—*continued.*

(b) the approved person, if any, under the licence or authority,

5 a notice stating that, when 28 days have expired after service of the notice, the Director intends to suspend the licence or authority for a period (not exceeding 6 months) specified in the notice or to revoke the licence or authority, as the case may be, on the prescribed grounds specified in the notice, unless it has been established to his satisfaction that he should not do so.

10 (5) When 28 days have expired after the notice or notices has or have been served under subclause (4), the Director may, after considering any submissions made to him during that period by the person or persons on whom the notices were served—

(a) suspend the licence or authority to which the notice or notices relates or relate for the period (not exceeding 6 months) specified in the notice or notices; or

15 (b) revoke the licence or authority to which the notice or notices relates or relate,

by a further notice served on that person or those persons, which further notice shall specify the prescribed grounds on which the licence or authority is suspended or revoked, as the case may be.

20 (6) Notwithstanding subclauses (4) and (5), where a licensee or the holder of an authority has requested that his licence or authority be suspended or revoked, the Director may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

25 (a) suspend the licence or authority for the period (not exceeding 6 months) specified in the notice; or

(b) revoke the licence or authority,

as the case may require.

(7) A licence or authority shall be deemed not to be in force for any period for which it is suspended.

30 (8) Where a licence or authority has been suspended under this clause for a period, the Director may, at any time during that period, restore the licence or authority by serving on both the person who was the licensee or holder of the authority, and the person who was the approved person, if any, under the licence or authority, immediately before it was suspended a notice stating that the licence or
35 authority is restored.

Community Welfare.

SCHEDULE 3—*continued.*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES—*continued.***Temporary authorised supervisors and licensed managers.**

10. (1) The Minister may, by an instrument in writing, authorise a person specified
5 in the instrument to act as the approved person under a licence or fostering agency
authority for a period so specified that occurs during an absence (by reason of illness
or otherwise) of the approved person under the licence or authority.

(2) While a person is authorised by an instrument referred to in subclause (1)
to act as an approved person under a licence or fostering agency authority—

10 (a) he shall be deemed to be the person specified under section 64 (1) (c) or
(2) (c), 69 (1) (b) or 278 (1) (d), as the case may be, in the licence
or authority; and

15 (b) the conditions of the licence or authority that apply to the approved person
under the licence or authority shall, for the purposes of section 61 (2),
62 (2), 68 (4) or 276 (2), as the case may require, be deemed to apply
to him as if he were the approved person under the licence or authority.

(3) The Minister may, by notice served on the person specified in an instrument
referred to in subclause (1) by which that person was authorised to act as the
approved person under a licence or a fostering agency authority, revoke the instrument
20 on any ground that he considers sufficient.

SCHEDULE 4.

(Sec. 118.)

CHILDREN'S REVIEW PANEL AND CHILDREN'S BOARDS OF REVIEW.**Interpretation: Sch. 4.**

25 1. In this Schedule—

“Deputy President” means the Deputy President of the Boards of Review;

“member” means member of the Panel.

Community Welfare.

SCHEDULE 4—*continued.*CHILDREN'S REVIEW PANEL AND CHILDREN'S BOARDS OF REVIEW—*continued.***Constitution of the Children's Review Panel.**

2. (1) The Children's Review Panel shall consist of persons, appointed by the Minister—

- (a) at least 1 of whom is an officer and who, in his opinion, have knowledge of or experience in administration, education, psychology or social work; and
- (b) the remainder of whom are persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Children's Review Panel.

10

(2) Of the members—

(a) 1 shall, in the instrument of his appointment as a member or in a subsequent instrument executed by the Minister, be appointed as the President of the Boards of Review; and

15

(b) 1 shall, in the instrument of his appointment as a member or in a subsequent instrument executed by the Minister, be appointed as the Deputy President of the Boards of Review.

(3) A person of or above the age of 65 years shall not be appointed as a member.

20 Term and vacation of office, etc.

3. (1) Subject to subclause (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 is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

25 (2) A member (other than a public servant) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

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

30 (4) A member shall be deemed to have vacated his office—

(a) if he dies;

(b) if he resigns his office by writing under his hand addressed to the Minister;

*Community Welfare.*SCHEDULE 4—*continued.*CHILDREN'S REVIEW PANEL AND CHILDREN'S BOARDS OF REVIEW—*continued.*

- 5 (c) if he 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;
- (d) upon his attaining the age of 65 years;
- (e) if he is removed from office by the Minister; or
- (f) if, being an officer when he was appointed a member, he ceases to be an officer.

10 President and Deputy President.

4. (1) Subject to this Schedule, the President or Deputy President holds office until he ceases to be a member and is eligible, if he is reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

15 (2) The Deputy President may exercise the functions of the President under Division 8 of Part VII—

- (a) if the President—
- 20 (i) delegates his functions to the Deputy President (which the President is hereby authorised to do);
- (ii) is absent from New South Wales; or
- (iii) is prevented by illness or other incapacity from exercising his functions under Division 8 of Part VII; or

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

(3) Where, under subclause (2), the Deputy President—

- 25 (a) is entitled to exercise the functions of the President, a reference in this Act to the President shall be construed as a reference to the Deputy President; and
- (b) exercises the functions of the President, he shall be deemed to be the President.

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

Community Welfare.

SCHEDULE 4—*continued.*

CHILDREN'S REVIEW PANEL AND CHILDREN'S BOARDS OF REVIEW—*continued.*

Form and effect of delegation.

5 (1) A delegation under clause 4 (2) (a) (i) shall be by instrument in writing, may be made subject to such conditions or such limitations as to the exercise of the function delegated, or as to time or circumstance, as may be specified in the instrument of delegation and may by instrument in writing be revoked at any time.

(2) A function, the exercise of which has been delegated under clause 4 (2) (a) (i), may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

Boards of Review.

6 (1) The President may establish Boards of Review each of which shall consist of 2 members of the Panel, not more than 1 of whom is an officer.

15 (2) The President may establish 1 or more Boards of Review generally for the purpose of carrying out reviews of children under Division 8 of Part VII or may establish a Board of Review for the purpose of carrying out a particular review under that Division.

Procedure.

20 7. The procedure of a Board of Review shall, subject to the regulations, be as directed by the President.

SCHEDULE 5.

(Sec. 130.)

CHILDREN'S PANELS.

Interpretation: Sch. 5.

25 1. In this Schedule—

“full-time member” means a member who is required by an instrument referred to in clause 3 (2) to devote the whole of his time to the duties of his office;

“member” means a member of the Children's Panel Council.

Community Welfare.

SCHEDULE 5—*continued.*

CHILDREN'S PANELS—*continued.*

Constitution of the Children's Panel Council.

2. (1) The Children's Panel Council shall consist of persons, appointed by the
5 Governor, being—

- (a) members of the police force (of or above the rank of Inspector) nominated by the Minister administering the Police Regulation Act, 1899;
- (b) officers nominated by the Minister; and
- 10 (c) other persons who the Governor considers have suitable qualifications or experience for membership of that Council.

(2) The Public Service Act, 1979, 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 such a member.

15 (3) A person of or above the age of 65 years shall not be appointed as a member.

Senior Chairman and Deputy Senior Chairman.

3. (1) The Governor may, by the instrument appointing a person to be a member referred to in clause 2 (1) (b) or (c), or by a subsequent instrument executed by the Governor with respect to a member so referred to, appoint such a member to be the
20 Senior Chairman of the Children's Panel Council and another such member to be the Deputy Senior Chairman of the Children's Panel Council.

(2) The person holding office as the Senior Chairman, or the Deputy Senior Chairman, of the Children's Panel Council shall, if required to do so by the instrument
25 appointing him to that office, devote the whole of his time to the duties of the office held by him.

Functions of Deputy Senior Chairman.

4. (1) The Deputy Senior Chairman may exercise the functions of the Senior Chairman under this Schedule—

- (a) if the Senior Chairman—
30 (i) delegates his functions to the Deputy Senior Chairman (which the Senior Chairman is hereby authorised to do);
(ii) is absent from New South Wales; or

Community Welfare.

SCHEDULE 5—*continued.*CHILDREN'S PANELS—*continued.*

- (iii) is prevented by illness or other incapacity from exercising his functions under this Schedule; or
- 5 (b) if there is no person holding the office of Senior Chairman.
- (2) Where, under subclause (1), the Deputy Senior Chairman—
- (a) is entitled to exercise the functions of the Senior Chairman, a reference in this Schedule to the Senior Chairman shall be construed as a reference to the Deputy Senior Chairman; and
- 10 (b) exercises the functions of the Senior Chairman, he shall be deemed to be the Senior Chairman.
- (3) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy Senior Chairman to exercise the functions of the Senior Chairman and all acts or things done or omitted to be done by the Deputy Senior
- 15 Chairman when exercising those functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the Senior Chairman.

Form and effect of delegation.

5. A delegation under clause 4 (1) (a) (i) shall be by instrument in writing, may be made subject to such conditions or such limitations as to the exercise of the
- 20 function delegated, or as to time or circumstances, as may be specified in the instrument of delegation and may by instrument in writing be revoked at any time.

Term of office.

6. Subject to clause 8 (2), a member shall hold office for such term, not exceeding 3 years, as is specified in the instrument of his appointment, and is, if otherwise
- 25 qualified, eligible for reappointment.

Remuneration of members.

7. (1) A full-time member (other than a public servant or a member of the police force) is entitled to be paid—
- 30 (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and

Community Welfare.

SCHEDULE 5—continued.**CHILDREN'S PANELS—continued.**

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

5 (2) A member, other than a full-time member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

Vacation of office.

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

(2) A member shall be deemed to have vacated his office—

(a) if he dies;

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

15 (c) if he 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;

(d) upon his attaining the age of 65 years;

(e) if he is removed from office by the Governor;

20 (f) if, being a member referred to in clause 2 (1) (a), he ceases to be a member of the police force or is demoted below the rank of Inspector; or

(g) if, being a member referred to in clause 2 (1) (b), he ceases to be an officer.

Children's Panels.

9. (1) The Senior Chairman of the Children's Panel Council may establish
Children's Panels each of which shall consist of 3 members of the Council of whom—

25 (a) 1 shall be a member referred to in clause 2 (1) (a);

(b) 1 shall be a member referred to in clause 2 (1) (b); and

(c) 1 shall be a member referred to in clause 2 (1) (c).

30 (2) The Senior Chairman of the Children's Panel Council may establish 1 or more Children's Panels for the purpose of considering reports generally in respect of children or any class of those reports or may establish a Children's Panel for the purpose of considering a particular report.

Community Welfare.

SCHEDULE 5—*continued.*

CHILDREN'S PANELS—*continued.*

Reference of reports.

10. The Senior Chairman of the Children's Panel Council shall be responsible for
5 the reference of reports to Children's Panels.

Chairman.

11. At a sitting of a Children's Panel—

- (a) where the Senior Chairman has nominated himself as a member of that Panel
—the Senior Chairman;
- 10 (b) where the Senior Chairman has not nominated himself as a member of that
Panel but has so nominated the Deputy Senior Chairman—the Deputy Senior
Chairman; or
- (c) except as provided in paragraphs (a) and (b)—the member of that Panel
referred to in clause 9 (1) (c),

15 shall preside at the sitting of that Panel.

Decision of Children's Panel.

12. (1) A decision of at least 2 of the members of a Children's Panel shall be the
decision of the Panel.

20 (2) A certificate purporting to be signed by the Senior Chairman of the Child-
ren's Panel Council and specifying a determination made by a Children's Panel under
section 133 (1) is admissible in evidence and is prima facie evidence of the making
of the determination.

Procedure.

25 13. The procedure of a Children's Panel shall, subject to the regulations, be as
directed by the Senior Chairman of the Children's Panel Council.

Preservation of rights of full-time members.

14. (1) In this clause—

“statutory body” means any body declared under clause 16 to be a statutory body
for the purposes of this Schedule;

Community Welfare.

SCHEDULE 5—*continued.*

CHILDREN'S PANELS—*continued.*

5 "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subclause (3) and to the terms of his appointment, where a full-time member was, immediately before his appointment as a full-time member—

- (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- 10 (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

- 15 (e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a full-time member; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

20 as if he had continued to be such an officer, contributor or person during his service as a full-time member, and—

- 25 (h) his service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- (i) he shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this clause.

30 (3) If a full-time member would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as a full-time member or at any later time while he holds office as a full-time member) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) cease to apply to or in respect of him and the
35 Government of New South Wales in any case where he becomes a contributor to such another superannuation scheme.

Community Welfare.

SCHEDULE 5—*continued.*CHILDREN'S PANELS—*continued.*

(4) Subclause (3) does not prevent the payment to a full-time member upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of his resignation, to be an officer or employee for the purposes of that scheme.

(5) A full-time member shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Full-time member entitled to reappointment in former employment in certain cases.

10 15. (1) In this clause—

“retiring age” means—

- (a) in relation to a person who was, immediately before his appointment as a full-time member, an officer of the Public Service—the age of 60 years; and
- 15 (b) in relation to a person who was, immediately before his appointment as a full-time member, an officer or employee of a statutory body—the age at which officers or employees (being officers or employees of the class to which that person belonged immediately before his appointment as a full-time member), as the case may be, of that
20 statutory body are entitled to retire;

“statutory body” means any body declared under clause 16 to be a statutory body for the purposes of this Schedule.

(2) A person who ceases to be a full-time member, otherwise than pursuant to clause 8 (2) (paragraph (b) excepted), shall, if he has not attained the retiring
25 age, be entitled to be appointed, where, immediately before his appointment as a full-time member, he was—

- (a) an officer of the Public Service—to some position in the Public Service; or
- (b) an officer or employee of a statutory body—to some office in the service of that body,

30 not lower in classification and salary than that which he held immediately before his appointment as a full-time member.

Community Welfare.

SCHEDULE 5—*continued.*

CHILDREN'S PANELS—*continued.*

Declaration of statutory bodies.

- 5 16. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

SCHEDULE 6.

(Sec. 175 (4).)

PROVISIONS RELATING TO THE CHILDREN'S COURT AND THE MEMBERS THEREOF.

10 **Constitution of the Children's Court.**

1. The Children's Court shall consist of a senior member and such other members as the Governor may from time to time appoint.

Appointment and qualifications of members.

- 15 2. (1) A qualified person may, on the recommendation of the Minister of Justice, be appointed under and subject to the Public Service Act, 1979, to be a member.

(2) A person is qualified to be appointed as a member if—

- (a) he has attained the age of 35 years but not the age of 65 years; and
(b) he is a barrister admitted by, or a solicitor of, the Supreme Court or a person eligible to be admitted as a barrister by, or a solicitor of, that Court.

20 **Appointment of the senior member.**

3. The Governor, on the recommendation of the Minister of Justice, may, by the instrument of a member's appointment or by a subsequent instrument in writing, appoint a member to be the senior member.

Community Welfare.

SCHEDULE 6—*continued.*

PROVISIONS RELATING TO THE CHILDREN'S COURT AND THE MEMBERS THEREOF—*continued.*

Term of office of the senior member.

5 4. (1) Subject to this Schedule, the senior member holds office until he ceases to be a member.

(2) With the approval of the Governor, the senior member may resign his office as the senior member without resigning his office as a member.

Acting senior member.

10 5. (1) The Governor may, by instrument in writing, appoint a member or a person qualified to be appointed as a member to be acting senior member during such period as the senior member may be absent from his duties.

(2) While holding office as acting senior member, the acting senior member shall have and may exercise the functions of the senior member.

15 Appointment of holder of magisterial office.

6. (1) The appointment of a holder of a magisterial office as a member shall not, nor shall his service as a member, affect his tenure of that office or his rank, title, status, precedence, remuneration or other rights or privileges as a holder of that office.

20 (2) A holder of a magisterial office may, notwithstanding that he is a member, exercise his functions as a holder of that office, but while he is a member he shall not (unless otherwise provided by the instrument of his appointment as a member) be required to exercise his function as a holder of that office.

(3) The service, as a member, of a holder of a magisterial office shall, for all purposes, be taken to be service as a holder of that office.

25 Taking of certain oaths.

7. (1) A person appointed as a member who was not, at the time of his appointment, the holder of a magisterial office shall, on his appointment, take the oath of allegiance and the judicial oath as prescribed in the Oaths Act, 1900.

Community Welfare.

SCHEDULE 6—*continued.*PROVISIONS RELATING TO THE CHILDREN'S COURT AND THE MEMBERS THEREOF—
continued.

(2) Sections 11, 11A and 12 of the Oaths Act, 1900, apply to and in respect
5 of an oath required to be taken under subclause (1) as if the oath were required
to be taken under Part II of that Act.

Term of office of a member.

8. (1) A member shall hold office for such term, not exceeding 3 years, as is
specified in the instrument of his appointment, and is, if otherwise qualified, eligible
10 for reappointment.

(2) A member, not being the holder of a magisterial office, who is an officer
of the Public Service, is entitled, if he has not attained the age of 60 years, to be
appointed, upon the expiration of his term of office as a member, to some position
in the Public Service not lower in classification and salary than that of a member.

15 (3) The Public Service Board shall make a recommendation to the Minister
respecting the appointment of an officer to a position pursuant to subclause (2), but
the appointment need not be made in accordance with that recommendation.

(4) An appointment under subclause (2) shall be made by the Governor on the
recommendation of the Minister.

20 Powers of members.

9. A member shall have, in relation to his functions under the Justices Act, 1902,
conferred or imposed on him by this Act the same functions as if he were a stipendiary
magistrate.

SCHEDULE 7.

25

(Sec. 205.)

OFFENCES IN TRAINING CENTRES AND REMAND CENTRES.**Part 1.****Offences constituting misconduct in training centres and remand centres.**

(a) Disobedience of rules made under section 213.

30 (b) Assault on another person subject to control or on remand, but not being an
indictable offence.

*Community Welfare.*SCHEDULE 7—*continued.*OFFENCES IN TRAINING CENTRES AND REMAND CENTRES—*continued.*

- (c) Being idle in carrying out work.
- (d) Wilfully mismanaging work.
- 5 (e) Making a wound or sore upon one's own person.
 - (f) Disobedience of a lawful instruction of an officer, other than the superintendent of a training centre or remand centre.
 - (g) Obstructing an officer, other than the superintendent of a training centre or remand centre, in the execution of his duties.
- 10 (h) Causing a nuisance or disturbance by making excessive noise or by engaging in disruptive behaviour.
 - (i) Preferring a frivolous charge of misconduct or serious misconduct against a person subject to control or on remand.
- 15 (j) Introducing into food or drink anything liable to render it unpalatable or unwholesome.
- (k) Returning late, by a period of less than 24 hours, to a training centre or remand centre after leave.
- (l) Petty thieving.
- 20 (m) Aiding, abetting, counselling or procuring the commission of any of the offences referred to in paragraphs (a)–(l) of this Part.

Part 2.

Offences constituting serious misconduct in training centres and remand centres.

- 25 (a) Wilful destruction of, damage to, or disfigurement of, any property of the Crown in the training centre or remand centre or any property used for the purposes of the training centre or remand centre in which the person subject to control or on remand and charged with this offence is ordered or required to be detained.
- (b) Assault on an officer.
- (c) Making, concealing or having in possession, without lawful authority, any tool, weapon, knife, key, implement or other thing for an unlawful purpose.
- 30 (d) Making a complaint against an officer knowing it to be false.
- (e) Disobedience of a lawful instruction of a superintendent of a training centre or remand centre.
- (f) Returning late, by a period of 24 hours or more but not more than 7 days, to a training centre or remand centre after leave.

*Community Welfare.***SCHEDULE 7—continued.****OFFENCES IN TRAINING CENTRES AND REMAND CENTRES—continued.**

- (g) Obstructing a superintendent of a training centre or remand centre in the execution of his duties.
- 5 (h) Taking part in any riot or tumult in or in the vicinity of a training centre or remand centre.
- (i) Cruelly maiming, wounding or injuring any animal.
- (j) Persistent neglect or refusal to obey rules made under section 213 or obey lawful instructions of officers.
- 10 (k) Inciting another person subject to control or on remand to commit any of the offences referred to in paragraphs (a)–(j) of this Part.
- (l) Aiding, abetting, counselling or procuring the commission of any of the offences referred to in paragraphs (a)–(k) of this Part.

SCHEDULE 8.

15

(Sec. 261.)

INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL.**Interpretation: Sch. 8.**

1. In this Schedule—

- “Deputy President” means the Deputy President of the Tribunals; “
- 20 “member” means a member of the Review Panel.

Review Panel.

2. (1) The members shall be appointed by the Governor from 1 or more of the following classes of persons:—

- 25 (a) persons who, in the opinion of the Governor, have knowledge of and experience in administration, education, psychology or social work;
- (b) medical practitioners;
- (c) barristers;

Community Welfare.

SCHEDULE 8—*continued.*INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—*continued.*

(d) solicitors;

5 (e) other persons who, in the opinion of the Governor, have suitable qualifications or experience warranting their appointment as members.

(2) The total number of members appointed from the classes referred to in subclause (1) (a) and (c) shall exceed the total number of members appointed from the classes referred to in subclause (1) (b), (c) and (d).

(3) Of the members—

10 (a) I shall, in the instrument of his appointment as a member or by a subsequent instrument executed by the Governor, be appointed as President of the Tribunals; and

15 (b) I shall, in the instrument of his appointment as a member or by a subsequent instrument executed by the Governor, be appointed as Deputy President of the Tribunals.

(4) A person of or above the age of 65 years shall not be appointed as a member.

(5) The Public Service Act, 1979, 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.

20 Term and vacation of office, etc.

3. (1) Subject to subclause (3), 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 is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

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

(3) A member shall be deemed to have vacated his office—

(a) if he dies;

(b) if he resigns his office by writing under his hand addressed to the Governor,

Community Welfare.

SCHEDULE 8—continued.**INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—continued.**

- 5 (c) if he 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;
- (d) upon his attaining the age of 65 years; or
- (e) if he is removed from office by the Governor.

Remuneration.

- 10 4. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

President and Deputy President.

- 15 5. (1) Subject to this Schedule, the President or Deputy President holds office until he ceases to be a member and is eligible, if he is reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

(2) The Deputy President may exercise the functions of the President under this Act—

- (a) if the President—
- 20 (i) delegates his functions to the Deputy President (which the President is hereby authorised to do);
- (ii) is absent from New South Wales; or
- (iii) is prevented by illness or other incapacity from exercising his functions under this Act; or
- (b) if there is no person holding the office of President.
- 25 (3) Where, under subclause (2), the Deputy President—
- (a) is entitled to exercise the functions of the President, a reference in this Act to the President shall be construed as a reference to the Deputy President; and
- (b) exercises the functions of the President, he shall be deemed to be the President.
- 30 (4) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President to exercise the functions of the President and all acts or things done or omitted to be done by the Deputy President when exercising those functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

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SCHEDULE 8—*continued.*INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—*continued.***Form and effect of delegation.**

6. (1) A delegation under clause 5 (2) (a) (i) shall be by instrument in writing, 5 may be made subject to such conditions or limitations as to the exercise of the function delegated, or as to time or circumstance, as may be specified in the instrument of delegation and may by instrument in writing be revoked at any time.

(2) A function, the exercise of which has been delegated under clause 5 (2) (a) (i), may, while the delegation remains unrevoked, be exercised from time to time 10 in accordance with the terms of the delegation.

Establishment of Tribunals.

7. (1) The President may establish an Intellectually Handicapped Persons Review Tribunal—

15 (a) generally for the purpose of the exercise of the functions conferred on a Tribunal by all or any of the provisions of this Act; or

(b) for the purposes of—

(i) any particular class of cases; or

(ii) any particular case,

that may arise or arises in the exercise of any of those functions.

20 (2) A Tribunal shall be constituted by not less than 3 nor more than 5 members nominated by the President.

(3) There may be more than 1 Tribunal.

(4) The President shall notify a member nominated under subclause (2) (other 25 than the President) of his nomination as soon as practicable after the nomination is made.

(5) Where the members nominated under subclause (2) do not include the 30 President or the Deputy President, the President shall nominate 1 of the members so nominated as Chairman of the Tribunal and shall, when notifying under subclause (4) the member so nominated of his nomination, notify him also of his nomination as Chairman.

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SCHEDULE 8—*continued.*INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—*continued.***Procedure of Tribunal.**

8. The procedure for the arranging of, and for the conduct of business at, any sitting of a Tribunal shall, subject to this Schedule and any rules made under clause 25, be as determined by the Tribunal.

Chairman and votes of members.

9. (1) At a sitting of a Tribunal—
- 10 (a) where the President has nominated himself as a member to constitute the Tribunal—the President;
- (b) where the President has not nominated himself as a member to constitute the Tribunal but has so nominated the Deputy President—the Deputy President; or
- 15 (c) where the President has nominated a member as Chairman as referred to in clause 7 (5)—the member,
- shall preside as Chairman of the Tribunal.

(2) Questions arising at a sitting of a Tribunal shall be determined by a majority of votes of the members present and voting.

- 20 (3) The member presiding as Chairman at a sitting of a Tribunal shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

Adjournment.

10. (1) A Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.
- 25 (2) In the absence from a sitting of a Tribunal of 1 or more, but not all, of the members nominated, under clause 7, to constitute a Tribunal, the remaining member or members may exercise the Tribunal's functions under subclause (1).

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SCHEDULE 8—*continued.*INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—*continued.***Evidence.**

11. A Tribunal is not bound by the rules or practice as to evidence and may
5 inform itself on any matter in such manner as it thinks fit.

Exclusion of the public.

12. (1) Proceedings before a Tribunal shall be open to the public unless the Tri-
bunal, in any particular case, determines that the proceedings shall be conducted wholly
or partly in camera.

10 (2) The provisions of section 185 (1) (c), (2), (3) and (4) apply in relation to
proceedings before a Tribunal with respect to an intellectually handicapped person in
the same way as they apply with respect to proceedings referred to in those provisions
before the Children's Court.

Parties to proceedings.

15 13. The parties to any proceedings before a Tribunal are the intellectually
handicapped person to whom the proceedings relate and, in the case of proceedings
under—

(a) section 262 (3)—the Director;

20 (b) section 262 (7)—the representative of the intellectually handicapped person
and the Director; or

(c) section 266, 267 or 272—the Minister, the representative of the intellectually
handicapped person and, in the case of proceedings under section 267, any
other person who is the applicant,

and any other person who, in the opinion of the Tribunal, has a genuine concern for
25 the welfare of the intellectually handicapped person.

Right of appearance.

14. (1) In any proceedings before a Tribunal, the parties to the proceedings may
appear in person or be represented by an agent, a barrister, a solicitor or otherwise.

30 (2) Where, in proceedings before a Tribunal relating to a child, the child is
not represented by an agent, a barrister, a solicitor or otherwise, the Tribunal shall,
make such order, whether by way of adjournment or otherwise, as it thinks fit, to give
the child the opportunity to be so represented.

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SCHEDULE 8—*continued.*INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—*continued.***Presentation of cases.****15. A party to proceedings before a Tribunal may—**

- 5 (a) call and examine any witness;
- (b) cross-examine a witness called by another party;
- (c) give evidence on oath;
- (d) produce documents and exhibits to the Tribunal; and
- 10 (e) otherwise adduce, orally and in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the proceedings.

Powers of a Chairman of a Tribunal.**16. (1) The member presiding as Chairman at a sitting 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—
- 15 (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 proceedings before the Tribunal,
- at a time, date and place specified in the instrument;
- 20 (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).

- (2) Where a document is produced to a Tribunal pursuant to a requirement made under subclause (1), the Tribunal may take possession of the document for
- 25 such period as it considers necessary for the purpose of hearing the proceedings before it.

Questions of a member.

17. (1) A member may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably
- 30 related to the proceedings before the Tribunal.

Community Welfare.

SCHEDULE 8—*continued.*INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—*continued.*

(2) A person is not excused from answering a question put to him by a member 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 clause 18 (c) or in relation to a charge of perjury in respect of the answer.

Offences.

10 18. A person shall not—

- (a) refuse, fail or neglect to comply with a requirement made of him under clause 16 (1) or 17 (1) by a member to the extent to which he is lawfully able to comply with the requirement;
- 15 (b) in purported compliance with a requirement made of him under clause 16 (1) (a) (ii) by a member, produce any document knowing it to be false or misleading in a material particular; or
- (c) not having been sworn, make a statement that is false or misleading in a material particular when he is appearing before a Tribunal.

Penalty: \$100.

20 Witnesses' expenses.

19. A person, other than an officer, who is required to appear or to give evidence before a Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of him.

Decisions of the Tribunal.

25 20. (1) A decision of a Tribunal where it relates to a decision of the Minister or the Director with respect to proceedings before it shall be final and shall be given effect to as if it were the decision of the Minister or Director.

(2) A decision of a Tribunal with respect to proceedings before it shall be in the form of an instrument in writing, setting out the reasons for the decision, and be
30 signed by the member who presided as Chairman at the sitting of the Tribunal at which the decision was made.

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

Community Welfare.

SCHEDULE 8—*continued.*

INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—*continued.*

Records of proceedings.

21. (1) The member presiding as Chairman at a sitting of a Tribunal shall cause a record of the proceedings at the sitting to be made in the prescribed manner.

(2) Records made for the purposes of subclause (1) may be destroyed after the expiration of the prescribed period.

Authentication of documents, etc.

22. Every document requiring authentication by a Tribunal may be sufficiently authenticated if signed by a person purporting to be the member who presided at the sitting of the Tribunal when the proceedings with respect to which the document was prepared were held.

Certain proceedings prohibited.

23. 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 or omitted or suffered to be done by the Tribunal or member and purporting to be done, ordered, omitted or suffered for the purposes of carrying out the provisions of this Act, if the Tribunal or member has acted in good faith and with reasonable care.

Application of the Defamation Act, 1974.

24. 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.

Rules.

25. (1) Five members nominated by the President, who shall include the President or the Deputy President, or both, may make rules, not inconsistent with this Act or the regulations, for or with respect to the arranging of, and conduct of business at, any sitting of a Tribunal.

(2) Different rules may be made under subclause (1) to apply in different circumstances.

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SCHEDULE 8—*continued.*INTELLECTUALLY HANDICAPPED PERSONS REVIEW PANEL—*continued.*

(3) The provisions of sections 34 (II), 41 (I), (II) and (III) and 42 of the Interpretation Act, 1897, apply to and in respect of a rule made under subclause (1) in the same way as they apply to and in respect of a regulation, rule, by-law or instrument, as the case may be, referred to in those provisions.

SCHEDULE 9.

(Sec. 286.)

COMMUNITY WELFARE APPEALS TRIBUNAL.

10 Interpretation: Sch. 9.

1. In this Schedule, "member" means a member of the Tribunal.

Constitution of the Tribunal.

2. (1) The Community Welfare Appeals Tribunal shall consist of persons, appointed by the Governor, from one or more of the following classes of persons:—

- 15 (a) persons who, in the opinion of the Governor, have knowledge of and experience in administration, education, psychology, social work or child care;
- (b) medical practitioners;
- (c) barristers;
- (d) solicitors;
- 20 (e) other persons who, in the opinion of the Governor, have suitable qualifications or experience warranting their appointment as members of the Tribunal.
- (2) Of the members—
- (a) 1 shall, in the instrument of his appointment as a member or a subsequent instrument executed by the Governor, be appointed as President of the Tribunal; and
- 25 (b) 1 shall, in the instrument of his appointment as a member or a subsequent instrument executed by the Governor, be appointed as Deputy President of the Tribunal.

Community Welfare.

SCHEDULE 9—continued.**COMMUNITY WELFARE APPEALS TRIBUNAL—continued.**

(3) A person of or above the age of 65 years shall not be appointed as a member.

5 (4) The Public Service Act, 1979, 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.

Term and vacation of office, etc.

3. (1) Subject to subclause (3), a member shall hold office for the period of 3
10 years commencing with the day from which he is declared to be appointed in the instrument appointing him or such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

(2) The Governor may remove a member from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment.

15 (3) A member shall be deemed to have vacated his office—

(a) if he dies;

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

20 (c) if he 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;

(d) upon his attaining the age of 65 years; or

(e) if he is removed from office by the Governor.

Remuneration.

4. A member is entitled to be paid such remuneration (including travelling and
25 subsistence allowances) as the Minister may from time to time determine in respect of him.

President and Deputy President.

5. (1) Subject to this Schedule, the President or Deputy President holds office until
30 he ceases to be a member and is eligible, if he is reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

Community Welfare.

SCHEDULE 9—continued.**COMMUNITY WELFARE APPEALS TRIBUNAL—continued.**

(2) The Deputy President may exercise the functions of the President under this Act—

5 (a) if the President—

(i) delegates his functions to the Deputy President (which the President is hereby authorised to do);

(ii) is absent from New South Wales; or

10 (iii) is prevented from illness or other incapacity from exercising his functions under this Act; or

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

(3) Where, under subclause (2), the Deputy President—

15 (a) is entitled to exercise the functions of the President, a reference in this Act to the President shall be construed as a reference to the Deputy President; and

(b) exercises the functions of the President, he shall be deemed to be the President.

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

Form and effect of delegation.

25 6. (1) A delegation under clause 5 (2) (a) (i) shall be by instrument in writing, may be made subject to such conditions or limitations as to the exercise of the function delegated, or as to time or circumstance, as may be specified in the instrument of delegation and may by instrument in writing be revoked at any time.

30 (2) A function, the exercise of which has been delegated under clause 5 (2) (a) (i), may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

Composition of the Tribunal for the purpose of hearing proceedings.

7. (1) The Tribunal shall, for the purpose of hearing proceedings, be constituted by not less than 3 and not more than 5 members nominated by the President.

Community Welfare.

SCHEDULE 9—continued.

COMMUNITY WELFARE APPEALS TRIBUNAL—continued.

(2) A nomination made for the purposes of subclause (1) may be made generally or in a particular case or class of cases.

5 (3) The President shall notify a member nominated under subclause (1) (other than the President) of his nomination as soon as practicable after the nomination is made.

(4) Where the members nominated under subclause (1) do not include the President or the Deputy President, the President shall nominate 1 of the members
10 so nominated as Chairman of the Tribunal and shall, when notifying under subclause (3) the member so nominated of his nomination, notify him also of his nomination as Chairman.

Sittings of the Tribunal.

8. Where the Governor has appointed not less than 6 members, more than 1
15 sitting of the Tribunal may be held at the same time.

Procedure at sittings of the Tribunal.

9. The procedure for the arranging of, and for the conduct of business at, any sitting of the Tribunal shall, subject to this Schedule and any rules of the Tribunal made under clause 27, be as determined by the Tribunal.

20 Chairman and votes of members.

10. (1) At a sitting of the Tribunal—

(a) where the President has nominated himself as a member of the Tribunal—the President;

25 (b) where the President has not nominated himself as a member of the Tribunal but has so nominated the Deputy President—the Deputy President; or

(c) where the President has nominated a member as Chairman as referred to in clause 7 (4)—the member,

shall preside as Chairman of the Tribunal.

(2) Questions arising at a sitting of the Tribunal shall be determined by a
30 majority of votes of the members present and voting.

Community Welfare.

SCHEDULE 9—continued.**COMMUNITY WELFARE APPEALS TRIBUNAL—continued.**

(3) The member presiding as Chairman at a sitting of the Tribunal shall have a deliberative vote and, in the event of an equality of votes, shall have a second or
5 casting vote.

Preliminary conferences.

11. The Tribunal or, where the Tribunal so directs, a member may, before formally commencing to hear any proceedings with respect to any decision of the Minister or the Director, confer informally with the parties to the proceedings and make any
10 determination with respect to the decision that is agreed to by the parties to the proceedings.

Adjournment.

12. (1) The Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

15 (2) In the absence from a sitting of the Tribunal of 1 or more, but not all, of the members nominated, under clause 7, to constitute the Tribunal at that sitting, the remaining member or members may exercise the Tribunal's function under sub-clause (1).

Evidence.

20 13. (1) The Tribunal is not bound by the rules or practice as to evidence and may inform itself on any matter in such manner as it thinks fit.

(2) In any proceedings before it the Tribunal shall consider the matter which is the subject of the proceedings de novo and without giving any weight to the decision of the Minister or the Director appealed against.

25 Exclusion of the public.

14. (1) Proceedings before the Tribunal shall be open to the public unless the Tribunal, in any particular case, determines that the proceedings shall be conducted wholly or partly in camera.

30 (2) In provisions of section 185 (1) (c), (2), (3) and (4) apply in relation to proceedings before the Tribunal with respect to a child in the same way as they apply with respect to proceedings referred to in those provisions before the Children's Court.

Community Welfare.

SCHEDULE 9—continued.**COMMUNITY WELFARE APPEALS TRIBUNAL—continued.****Right of appearance.**

15 (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or be represented by an agent, a barrister, a solicitor or otherwise.

(2) Where, in proceedings before the Tribunal relating to a child, the child is not represented by an agent, a barrister, a solicitor or otherwise, the Tribunal shall make such order, whether by way of adjournment or otherwise, as it thinks fit, to give the child the opportunity to be so represented.

10 Presentation of cases.

16. A party to proceedings before the Tribunal may—

- (a) call and examine any witness;
- (b) cross-examine a witness called by another party;
- 15 (c) examine any copy of any document or any part of a document lodged with the Tribunal under section 288;
- (d) give evidence on oath;
- (e) produce documents and exhibits to the Tribunal; and
- (f) otherwise adduce, orally and in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the proceedings.

20 Powers of the Chairman of the Tribunal.

17. (1) The member presiding as Chairman at a sitting of the 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
 - 25 (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 proceedings before the Tribunal,
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
30 of his giving evidence on oath; and
- (c) administer an oath referred to in paragraph (b).

Community Welfare.

SCHEDULE 9—continued.**COMMUNITY WELFARE APPEALS TRIBUNAL—continued.**

(2) Where a document is produced to the Tribunal pursuant to a requirement made under subclause (1), the Tribunal may take possession of the document for such 5 period as it considers necessary for the purpose of hearing the proceedings before it.

Questions of a member.

18. (1) A member 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 proceedings before the Tribunal.

10 (2) A person is not excused from answering a question put to him by a member 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 clause 19 (c) or in relation to a charge of 15 perjury in respect of the answer.

Offences.

19. A person shall not—

- 20 (a) refuse, fail or neglect to comply with a requirement made of him under clause 17 or 18 (1) by a member to the extent to which he is lawfully able to comply with the requirement;
- (b) in purported compliance with a requirement made of him under clause 17 (1) (a) (ii) by a member, produce any document knowing it to be false or misleading in a material particular; or
- 25 (c) not having been sworn, make a statement that is false or misleading in a material particular when he is appearing before the Tribunal.

Penalty: \$100.

Witnesses' expenses.

30 20. A person, other than an officer, who is required to appear or to give evidence before the Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of him.

Community Welfare.

SCHEDULE 9—*continued.*

COMMUNITY WELFARE APPEALS TRIBUNAL—*continued.*

Form of decisions of the Tribunal.

21. (1) A decision of the Tribunal with respect to proceedings before it shall be in the form of an instrument in writing, setting out the reasons for the decision, and be signed by the member who presided as Chairman at the sitting of the Tribunal at which the decision was made.

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

10 Costs.

22. (1) The costs of any proceedings before the Tribunal shall be in the discretion of the Tribunal which may direct to and by whom and in what manner those costs or any part thereof shall be paid.

(2) Any such costs may be recovered as a debt in any court of competent jurisdiction.

(3) A certificate purporting to be signed by the President and containing a statement as to any matters relating to the award of costs under this clause is admissible in evidence and is prima facie evidence of those matters.

Records of proceedings.

23. (1) The member presiding as Chairman at a sitting of the Tribunal shall cause a record of the proceedings at the sitting to be made in the prescribed manner.

(2) Records made for the purposes of subclause (1) may be destroyed after the expiration of the prescribed period.

Authentication of documents, etc.

24. (1) Every document requiring authentication by the Tribunal may be sufficiently authenticated if signed by the President or Deputy President.

(2) Judicial notice shall be taken of the signature of the President or Deputy President when appearing on a document issued by the Tribunal.

Community Welfare.

SCHEDULE 9—*continued.*

COMMUNITY WELFARE APPEALS TRIBUNAL—*continued.*

Certain proceedings prohibited.

25. No proceedings lie against the Tribunal or a member for or on account of any
5 act, matter or thing done or ordered to be done or omitted or suffered to be done
by the Tribunal or member and purporting to be done, ordered, omitted or suffered,
for the purpose of carrying out the provisions of this Act, if the Tribunal or member
has acted in good faith and with reasonable care.

Application of the Defamation Act, 1974.

10 26. For the purposes of section 18 of the Defamation Act, 1974, the proceedings
of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

Rules.

15 27. (1) Five members nominated by the President, who shall include the President
or the Deputy President, or both, may make rules of the Tribunal, not inconsistent
with this Act or the regulations, for or with respect to the arranging of, and conduct
of business at, any sitting of the Tribunal and generally to prescribe all matters that
by this Act are required or permitted to be prescribed by rules of the Tribunal or
are necessary or convenient to be prescribed by rules of the Tribunal for carrying
out or giving effect to this Act.

20 (2) Different rules of the Tribunal may be made to apply in different
circumstances.

(3) The provisions of sections 34 (II), 41 (I), (II) and (III) and 42 of the
Interpretation Act, 1897, apply to and in respect of a rule of the Tribunal made
under this Act in the same way as they apply to and in respect of a regulation, rule,
25 by-law or instrument, as the case may be, referred to in those provisions.