

CHILD WELFARE ACT.

Act No. 21, 1923.

An Act to amend and consolidate certain Acts George V,
No. 21.
relating to children. [Assented to, 30th
November, 1923.]

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

1. This Act may be cited as the "Child Welfare Act, Short title
and com-
mencement.
1923," and shall come into operation on a date to be
proclaimed by the Governor in the Gazette.

2. This Act is divided into Parts as follows :— Parts of Act.

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PART

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PART I.

PRELIMINARY.

Repeal and
savings.

3. (1) The Acts mentioned in the Schedule hereto are to the extent therein expressed hereby repealed.

(2) All persons appointed under any Act hereby repealed and holding office at the commencement of this Act shall be deemed to have been appointed hereunder.

(3) All schools declared to be public industrial schools under any Act hereby repealed shall continue to be such schools subject to the provisions of this Act relating to institutions constituted thereunder.

(4) The provisions of this Act shall apply to all children apprenticed or boarded-out under any Act hereby repealed as if such children had been apprenticed or boarded-out under this Act.

(5) All proclamations, regulations, rules and licenses issued or made under the authority of any Act hereby repealed and in force at the commencement of this Act shall, in so far as they are not inconsistent with this Act, be deemed to have been made or issued thereunder, and references in any such regulations to the provisions of the Acts repealed shall be construed as references to the corresponding provisions of this Act.

State
Children
Relief Board.

4. The powers and authorities of the State Children's Relief Board, which is hereby dissolved, are vested in the Minister.

5.

5. In this Act, unless the context otherwise requires,— **George V,
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“Age” means, in the absence of positive evidence <sup>Interpreta-
tion.</sup> as to age, the apparent age.

“Apprentice” means any boarded-out child under articles of indenture.

“Asylum” includes the Benevolent Asylum, every asylum for destitute children, or industrial asylum, and every charitable institution supported wholly or in part by grants from the Consolidated Revenue.

“Boarded-out” means placed in the care of some person for the purpose of being nursed or maintained by such person or in such person’s home.

“Child” means boy or girl under sixteen years of age, and in Part IV and Part IX means boy or girl under eighteen years of age.

“Committee” means advisory committee appointed under this Act.

“Court” means Children’s Court, and includes a magistrate or justices exercising the jurisdiction of a children’s court.

“Institution” means institution established under this Act, and includes special school for truants established under the Public Instruction (Amendment) Act, 1916.

“Justice” means justice of the peace.

“Juvenile offender” means child who has committed an offence.

“Local authority” means council of a municipality or shire and includes the governing body of a local government area, constituted or to be constituted.

“Lying-in home” means house in which more than one woman is received for confinement with or without payment of money.

“Magistrate” means stipendiary or police magistrate.

“Maintenance”

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“Maintenance” includes clothing, support, training, and education.

“Medical practitioner” means legally qualified medical practitioner.

“Minister” means Minister of Public Instruction.

“Near relative” means, except as regards an illegitimate child, father, mother, step-father, or step-mother of the child; and as regards an illegitimate child—the mother and the person admitting himself to be or adjudged by a competent court to be the father of such child, and the husband of the mother of such child if born before their marriage.

“Neglected child” means child—

- (a) who is in a brothel, or lodges, lives, resides, or wanders about with reputed thieves or with persons who have no visible lawful means of support, or with common prostitutes, whether such reputed thieves, persons or prostitutes are the parents of such child or not; or
- (b) who has no visible lawful means of support or has no fixed place of abode; or
- (c) who begs in any public place, or habitually wanders about public places in no ostensible occupation, or sleeps in the open air in any public place; or
- (d) who without reasonable excuse is not provided with sufficient and proper food, nursing, clothing, medical aid or lodging, or who is ill-treated or exposed by his parent:
Provided that such neglect, ill-treatment, or exposure has resulted or appears likely to result in any permanent or serious injury to the child; or
- (e) who takes part in any public exhibition or performance whereby the life or limb of such child is endangered; or
- (f) who, not being duly licensed for that purpose, is engaged in street trading; or

(g)

- (g) whose parents are habitual drunkards, or if one of these be dead, insane, unknown, undergoing imprisonment, or absent from the State, whose other parent is an habitual drunkard; or
- (h) who, being a female, solicits men or otherwise behaves in an indecent manner, or habitually wanders at night without lawful cause in a public place; or
- (i) who is in any place where opium or any preparation thereof is smoked; or
- (j) who is living under such conditions as indicate that the child is lapsing or likely to lapse into a career of vice and crime; or
- (k) who in the opinion of the court is under incompetent or improper guardianship.
- “Offence” includes any matter punishable summarily or by indictment.
- “Officer” includes any person acting under the instructions of the Minister, but does not include any special or other magistrate appointed for the judicial administration of this Act.
- “Parent” when used in relation to a child, includes a step-parent, guardian, any person cohabiting with a parent of the child, and any person who is by law liable to maintain the child.
- “Placed out” means placed in employment without being apprenticed.
- “Preliminary expenses” means the expenses of the maintenance of the mother during a period of one month immediately preceding the birth of her child, reasonable medical and nursing expenses attendant upon the confinement of the mother, and the expenses of the maintenance of the mother and child for three months immediately succeeding its birth.
- “Prescribed” means prescribed by this Act or by any regulations made hereunder.
- “Proclamation” means proclamation in the Gazette.

“Public

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- “Public place” means place to which the public have the right of access, or which the public are allowed to use, and includes a vessel or vehicle, and any part of premises licensed under Part III of the Liquor Act, 1912, which is open to the public.
- “Secretary” means the head of the department appointed to administer this Act.
- “Shelter” includes a place of safety within the meaning of section forty-four.
- “Still-born child” means a child born dead after the commencement of the sixth month of pregnancy.
- “Street” includes any highway or other public place, whether a thoroughfare or not.
- “Street trading” includes the hawking of newspapers, matches, flowers and other articles, playing, singing, or performing for profit, shoe-blackening, and any other like occupation carried on in any public place. But this definition does not include playing, singing, or performing at an occasional entertainment, the proceeds of which are wholly applied for the benefit of any school or of any church or charity.
- “Superintendent” includes manager or person in charge.
- “Uncontrollable,” as applied to a child, means child whom his parents cannot control.
- “Ward” means child who, under the provisions of this Act, has been received into an asylum or institution, adopted or apprenticed, or boarded-out, or placed out.

PART II.

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AUTHORITIES CHARGED WITH ADMINISTRATION OF ACT.

6. The Governor may, upon the recommendation of the Public Service Board, appoint a secretary and such officers as are necessary for the administration of this Act.

Appointment
of officers.

7. Such secretary and officers shall receive such remuneration and allowances as shall be fixed by the Public Service Board, and shall be subject to the provisions of the Public Service Acts during their tenure of office.

Payment of
officers.

8. (1) The Governor may from time to time appoint such persons as he thinks fit to form an advisory committee, or advisory committees.

Advisory
committees.

(2) Such committee or committees shall exercise such powers and duties as may be prescribed.

PART III.

BOARDING-OUT OF CHILDREN.

9. In all matters appertaining to the boarding-out of children under this Act, the Minister or person authorised by him shall be the authority to admit a child to State control and pay guardians such rates as may be prescribed, to direct the removal of such children, to apprentice any child boarded-out or placed out, at or before the end of his term of residence, to any person approved by the Minister, to approve of persons applying for the custody of children and to arrange the terms of such custody, and to direct the restoration of any child to his parent or guardian upon such terms as the Minister may think proper.

Authority of
Minister.

- George V,
No. 21.** **10.** The secretary may, and shall when so directed, remove any child from an asylum and cause him to be boarded-out, as hereinafter provided, for any period not extending beyond the time when such ward shall attain the age of fourteen years.
- Boarding-out
of child.**
- 11.** The secretary whenever directed by the Minister may remove any ward from an institution, and cause him to be boarded-out.
- Removal of
ward from an
institution.**
- 12.** The Minister may cause to be visited and inspected all children for two years after their official period of boarding-out, placing-out, or apprenticeship has terminated, and during such period of two years may cause such children to be removed from their existing guardians or custodians.
- Extension of
period of
supervision.**
- 13.** The Minister may deduct from the payments due to any guardian such amount as may be deemed equivalent to the loss occasioned by the neglect of such guardian to keep outfits up to regulation standard.
- Deduction
from pay-
ments to
guardian.**
- 14.** The Minister may in his discretion board out her own children to any widow, deserted wife, or wife whose husband is incapacitated through mental or bodily infirmity or is in gaol, or to the mother of an illegitimate child.
- Children may
be boarded-
out to
mothers.**
- 15.** The Minister may place invalid or sick children under his control in cottage-homes in approved localities.
- Cottage
homes.**

PART IV.

INSTITUTIONS.

- Governor
may establish
institutions.** **16.** The Governor may, by proclamation, establish and constitute, as institutions under this Act—
- (a) shelters for the reception and temporary detention and maintenance of children ;
 - (b) industrial schools for the reception, detention, and maintenance of children committed to such institutions ;
 - (c) homes for children committed to an institution, but whose cases call for segregation or special treatment.

17.

17. Every institution shall be controlled and administered under the direction of the Minister, and shall once at least in every three months, be visited and inspected by a person appointed by the Minister.

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Minister to have control of institutions.

18. (1) An order duly endorsed committing a child to an institution, or removing a child from one institution to another, shall be forwarded to the superintendent, and shall be sufficient warrant for the detention of the child.

Order to be forwarded to superintendent.

- (2) The production of—
- (a) such order so endorsed; or
 - (b) a copy of such order so endorsed with a memorandum purporting to be signed by the superintendent of any such institution, stating that the child named in such order was duly received into, and is at the time of signing thereof detained in such institution, or has been otherwise disposed of according to law; or
 - (c) any order made under this Act, or a copy thereof purporting to be signed by the clerk of the court at which the same was made and certified to be a correct copy,

Certain orders and copies to be evidence.

shall, without proof of the signature of the person purporting to have signed the same, be evidence in all courts and proceedings—

- (d) of the due making and signing of any such order, memorandum, or certificate; and
- (e) of the committal, detention, and identity of the child, and of the identity of the parent named in any such order, memorandum, or certificate.

19. All children committed to or inmates of an institution shall, subject to the directions of the Minister, be in the custody and under the control of the superintendent of the institution until they attain the age of eighteen years, or are discharged, removed from the institution, apprenticed, or placed out:

Children in institutions to be under control of superintendent.

Provided that a child committed to an institution on being charged with an indictable offence shall be detained in such institution until the expiration of the period named in the order of committal, or until he is lawfully discharged, removed from the institution, apprenticed, or placed out.

20.

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Powers and
duties of
Minister.

20. The Minister, with respect to any child who has been committed to or is an inmate of any institution—

- (a) shall determine the particular institution in which the child shall be placed and detained, provided that no child may remain in a shelter for more than one month, except by permission of the Minister;
- (b) may remove a child from one institution to another;
- (c) may remove any child from an institution and place him in an asylum, or may board him out.

Child may be
removed to an
institution.

21. The Minister may, on due cause being shown, take a boarded-out child or a child who has been placed in an asylum, and place him in an institution.

Religious
teaching.

22. (1) Every child, an inmate of any institution, shall, so far as religious teaching is concerned, be placed under the guidance and control of clergymen of the persuasion to which the parents of such child belong, or in which such child has been brought up.

(2) In the event of such parents or their religious persuasion not being known, and of the child not having been brought up in any religious persuasion, then as far as religious teaching is concerned—

- (a) such child shall, if of or over the age of twelve years, be placed under the guidance and control of the clergymen of such persuasion as the Minister may direct, unless such child states some persuasion in which he desires to be educated;
- (b) such child shall, if under the age of twelve years, be placed under the guidance and control of the clergymen of such persuasion as the Minister may direct, but may on attaining the age of twelve years select the persuasion in which he desires to be educated;
- (c) provided that if at any time the religious persuasion of any such child or of his parents become known to the Minister, he shall at once order the child to be placed under the guidance and control, as far as religious teaching is concerned, of clergymen of such persuasion.

23.

23. (1) The secretary may, subject to the approval of the Minister, by indenture bind or cause to be bound any child under his care and control, in accordance with and subject to the provisions of the Apprentices Act, 1901. George V,
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Child may be
apprenticed.

(2) The secretary also, subject to the approval of the Minister, may, under an approved form of agreement, place a child out in suitable employment in cases where apprenticeship conditions are not applicable. Child may be
placed-out.

(3) Any child so apprenticed or placed-out shall be liable to be proceeded against and punished for absconding, or for other misconduct, in the same way as any child apprenticed by his father with such child's consent. Punishment
for
misconduct.

24. Upon complaint made by the secretary to the Minister that any person to whom any such child has been apprenticed or placed-out is not performing the conditions of such indenture or agreement, or is unfit to have the further care or control of such child, the Minister may call upon such person to answer such complaint, and on proof thereof to his satisfaction the Minister may order such apprenticeship or agreement to be put an end to, and may direct the child to be sent back to an institution. Minister may
put an end to
apprentice-
ship or
agreement.

25. The Governor may discharge any child from an institution and restore him to the custody of his parent or other suitable person on such terms and conditions as to him may seem desirable, or as may be prescribed. Discharge of
child by
Governor.

26. (1) If it appears to a court on complaint by or on behalf of the Minister that any near relative is of ability to maintain or to contribute to the maintenance of a ward, the court may order such near relative to pay to the Minister a reasonable sum, in instalments or otherwise, as the court directs for or towards— Cost of
maintenance
of ward may
be recovered
from near
relatives.

(a) the past maintenance of such ward, whether such ward be alive or not at the time of the application ;

(b) the future maintenance of such ward.

(2) A like order against a near relative may, with his consent, be made on the committal of a ward to an institution by the court so committing him.

(3)

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(3) Such order, when made against a father or mother, may include the cost of bringing such parent back to the place where the order is made from any other place where he or she may for the time being reside.

(4) Where an order under this section is made in respect of a person against whom an order has been made in respect of the child under Part X of this Act, the court may rescind or amend the last-mentioned order so as to secure that the said person do not pay twice for the maintenance of the same child.

(5) Any order made under this section may be enforced, appealed from, quashed, confirmed, or varied, in the same manner in all respects as orders made under Part X of this Act. And the court may issue a warrant for the arrest of any person absconding from the State with a view to evade compliance with any order under this section.

Offences in
respect of
children.

27. Any person who—

- (a) ill-treats, terrorises, overworks, or injures any child committed to or an inmate of an institution;
- (b) counsels, or causes or attempts to cause, any such child to be withdrawn or to abscond from any institution or from the charge of any person with or to whom such child is boarded-out, placed out or apprenticed;
- (c) knowing any such child to have so withdrawn or to have so absconded, harbours or conceals such child or prevents him from returning to such institution or person;
- (d) having the charge of any such child—
 - (i) illegally discharges or dismisses or attempts to discharge or dismiss him from an institution;
 - (ii) neglects such child;
 - (iii) does not well and truly observe, perform, and keep all the covenants, conditions, and agreements contained in any indenture or agreement entered into by him respecting
any

any child and which by such indenture or agreement he has bound himself or agreed to observe, perform or keep,

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shall be liable to a penalty not exceeding one hundred pounds or to be imprisoned for a period not exceeding six months or both.

28. If any child committed to or an inmate of any institution be absent therefrom without the leave of the superintendent, any constable may apprehend and convey such child to such institution to be delivered into the custody of the superintendent thereof.

Child
deserting
may be
apprehended.

PART V.

PLACES USED FOR RECEPTION OF CHILDREN.

29. The person in charge of any place established or used for the reception and care of one or more children under the age of seven years, apart from their mothers, shall make application to the Minister in the prescribed form and manner for a license in respect of such place.

Licensing of
place used for
reception of
children.

The Minister shall thereupon cause inquiry to be made respecting such application and a report to be furnished by an officer.

The Minister upon receiving such report may grant or refuse to grant to the person in charge a license in respect of such place.

Every license granted shall be granted subject to such conditions and requirements as are prescribed.

30. For the purpose of making any inquiry and report as aforesaid respecting any place, or for the purpose of ensuring that the prescribed conditions and requirements are complied with and fulfilled in respect of any licensed place, any officer may, at any time, enter the place and inspect it and the children who are inmates thereof, and the person in charge of the place shall, during the course of such inspection, afford all reasonable facilities for such inspection.

Officer may
inspect place.

In

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No. 21.** In making such inspection the officer may, if he thinks fit, be accompanied by a medical practitioner or a police officer, or by both.

Any person who delays, hinders, or obstructs any officer in making such inspection shall be liable to a penalty not exceeding twenty-five pounds :

Provided that the Minister may at any time, by writing under his hand, order that the provisions of this section shall not apply in any particular case where he is satisfied that it is undesirable or unnecessary that it should apply. Any court may, in any particular case, suspend the operation of the provisions of this section for a period of eight days to enable such order to be obtained.

Where conditions of license not observed, Minister may cancel license.

31. Where, on any inspection of a licensed place, the officer finds that any of the prescribed conditions or requirements are not complied with or fulfilled, the secretary may give directions to the person in charge to ensure a compliance with and fulfilment of such conditions or requirements, failing which the license of such place may be cancelled by the Minister, and any children or inmates of such place may be removed therefrom and placed in such place as the Minister may approve.

Penalties on person in charge of unlicensed place.

32. Where any place is established or used for the reception and care of one or more children under the age of seven years apart from their mothers, and is not licensed under the provisions of this Act, the person in charge of such place shall be liable to a penalty not exceeding twenty-five pounds, and any children who are inmates of such place may be removed therefrom and placed in such care as the Minister may approve of: Provided that nothing in this Part shall apply when bona fide blood relationship or guardianship approved by the Minister exists between the said children and the persons by whom they are cared for.

Regulating reception of children under seven years.

33. (1) No person shall, without a written order of a court specifying the terms on which the child may be received, receive into his care, charge, or custody any child under the age of seven years to rear, nurse,

or

or otherwise maintain, apart from its mother, in consideration of the payment to such person of any sum of money or other valuable consideration otherwise than by way of periodical instalments; and no such instalment shall be paid for more than four weeks in advance, nor exceed the sum of thirty shillings per week. Any person receiving or agreeing to receive payment for the rearing, nursing, or maintenance of any child contrary to this section shall be guilty of an offence.

(2) This section shall not apply to any person being the legal or natural guardian of such child; nor to the manager or officers of any institution supported wholly or in part by public subscription, or bona fide by private charity where such institution is open to State inspection, or controlled by the State; nor to any person exempted for the time being from the operation of this section by the Minister.

(3) The secretary shall, if required, receive from anyone wishing to place a child in the care of such person a sum of money from which he shall make to the caretaker of such child such payments as are permitted under this Act.

(4) Every court when giving an order under this section shall in each case report to the secretary that it has given such order.

34. (1) Every person who receives into his care, charge, or custody any child under the age of seven years to rear, nurse, or otherwise maintain the same for payment under this Part shall register or cause to be registered the particulars in the form prescribed, at the office of the district registrar of births, deaths, and marriages, appointed under the provisions of the Act No. 17, 1899, for the district in which such person then resides, within seven days from the date of such child's reception if such office is within a distance of two miles from his place of abode, or within fourteen days if such office is not within two miles as aforesaid, and such registrar shall furnish such particulars to the secretary.

Registration
of reception
of children.

(2) Any person who fails to comply with the provisions of this section shall be guilty of an offence

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Change of
address to be
registered.

35. (1) No person who has in his care, charge, or custody any child in accordance with the provisions of this Part shall change his place of abode, or relinquish the care, charge, or custody of such child without forthwith notifying such change or relinquishment to the district registrar as aforesaid, and such registrar shall register the same in the form prescribed, and shall at once report such particulars to the secretary. When such change of abode is made to a place out of the district of such registrar he shall forward a copy of such registration of removal to the registrar of the district to which the child is removed, and upon receipt of such copy the said registrar shall enter the particulars therein set forth in a book provided for that purpose.

(2) Any person who fails to comply with the provisions of this section shall be guilty of an offence.

Notice to be
given of
death of
child.

36. (1) Every person having charge of a child registered under this Part shall, immediately after the death of any such child, if such death occurs elsewhere than in the city of Sydney, or any municipality included in the suburbs thereof, give or cause to be given notice of such death to the officer in charge of the nearest police station, and such officer shall make inquiry and report to the coroner for the district, or if the exigencies of the case so require to a justice, whether an inquest or magisterial inquiry respecting the cause of death is necessary, and in addition to such notice such person shall by registered letter report such death to the secretary.

(2) When the death of any such child occurs in the city of Sydney, or any municipality included in the suburbs thereof, such notice shall be given to the secretary, who may cause an inquest or inquiry to be held.

(3) The body of a child registered under this Part shall not be buried without the production of a certificate under the hand of the coroner or the justice who held the inquiry, or of a stipendiary or police magistrate, authorising such burial, or of a medical practitioner who has attended such child during its last illness, certifying the cause of death, and also that such cause was in no way consequent on the neglect or ill-treatment of such child.

(4)

(4) Any person having charge of a child registered as aforesaid who neglects, refuses, or omits to give notice of the death of such child in accordance with the provisions of this section shall be guilty of an offence.

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(5) Where the death occurs at a greater distance than fifteen miles from the nearest police station, satisfactory evidence that the omission to give such notice was not the result of wilful neglect on the part of the person in charge of such registered child shall entitle such person to the dismissal of the charge.

PART VI.

LYING-IN HOMES.

37. Every person in charge of a lying-in home shall furnish records in the form prescribed, and forward the same to the registrar for the district in which such person resides, within a period of twenty-four hours from the occurrence of each birth in such home, and any such person who fails to comply with the provisions herein contained, or wilfully falsifies such records, shall be guilty of an offence.

Keepers of
lying-in
homes to
furnish
records.

38. No person in charge of a lying-in home shall permit any child to be taken from such home unless in the charge of the mother of such child, without first obtaining the written consent of the secretary or a person authorised by him. Any such person who violates the provisions of this section shall be guilty of an offence.

Removal of
child from
lying-in
home.

39. Any person in charge of a lying-in home shall be responsible for the registration, in accordance with the provisions of the Act No. 17, 1899, of all births occurring in such house; and any such person who omits, neglects, or refuses to register the birth of any such child, shall be liable to the punishment provided by that Act.

Registration
of births by
householder.

40.

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Still-born
child not to
be interred
without a
certificate.

40. (1) When a woman is delivered in a lying-in home of a still-born child, no interment of such child shall take place without its being authorised by the certificate of a medical practitioner, magistrate, or constable of police, who has made personal inquiry into the circumstances.

(2) Any person interring any such still-born child without first obtaining such certificate shall be guilty of an offence.

(3) But any such still-born child, born in a lying-in home situated more than fifteen miles from the nearest such practitioner, magistrate, or constable of police, may be interred without such authority, but the birth of the child so buried shall be reported within seven days from the date of the burial, by the person who interred the body, to the nearest police officer, who shall forthwith make a full inquiry into the circumstances of the case, with the view of taking further action if necessary; and if the person who so buried the body shall fail to report as required, he shall be guilty of an offence.

PART VII.

PROTECTION OF CHILDREN.

Employment
of child in
dangerous
performances.

41. (1) Any person who causes or allows any child under the age of fourteen years to take part in any public exhibition or performance whereby, in the opinion of a court, the life or limbs of such child is or are endangered, and the parent or any person having the custody of such child who aids or abets such first-mentioned person therein, shall be guilty of an offence.

(2) Where in the course of a public exhibition or performance which in its nature is dangerous to the life or limb of a child under such age as aforesaid taking
part

part therein, any accident causing actual bodily harm occurs to such child, the employer of such child, whether its parent or not, shall be guilty of an offence; and if such employer is not the parent of such child, the court before which such employer is convicted may award as compensation a sum not exceeding one hundred pounds, to be paid by such employer to the child or to some person named by the court on behalf of the child for the bodily harm so occasioned.

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42. (1) Any person who—

- (a) causes or procures, or having the custody or charge thereof, allows any child under the age of sixteen years to be in any place for the purpose of begging or receiving alms, or inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale or otherwise; or
- (b) causes or procures, or having the custody or charge thereof, allows any child under the age of sixteen years to be in any place or in any premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale between ten o'clock at night and six o'clock in the morning; or
- (c) causes or procures, or who, having the custody or charge thereof, allows any child under the age of ten years to be at any time in any place, or in any premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering anything for sale,

Procuring
child to
solicit alms
or perform.

shall be guilty of an offence:

Provided that in the case of any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or other place of public amusement as aforesaid, where it is shown to the satisfaction of the Minister that proper provision has been made to secure the health

health

George V,
No. 21. health and kind treatment of any children proposed to be employed thereat, the Minister may, notwithstanding anything in this Act, grant a license for such time and during such hours and subject to such restrictions and conditions as he may think fit, for any child exceeding seven years of age, of whose fitness to take part in such entertainment or series of entertainments without injury the Minister is satisfied, to take part in such entertainment or series of entertainments, and such license may at any time be varied, added to, or rescinded by the said Minister upon sufficient cause being shown; and such license shall be sufficient protection to all persons acting under or in accordance with the same.

(2) The Minister may appoint any person to see that the restrictions and conditions of any license under this section are duly complied with; and such person shall have power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section.

(3) This section shall not apply in the case of any occasional entertainment, the proceeds of which are wholly applied for the benefit of any school or to any charitable object.

Custody or
charge
defined.

43. For the purposes of the last two preceding sections any person who is the parent of a child, or any person to whose charge a child is committed by its parent, or any person having actual possession or control of a child, shall be deemed to have the custody or charge thereof.

Removal of
child to a
place of
safety.

44. Any constable or any officer appointed under this Act may take any child under eighteen years of age in respect of whom there is reason to believe that an offence under this Act has been committed to a place of safety, and a child so taken to a place of safety, and also any child under eighteen years of age who seeks refuge in a place of safety, may be there detained until the child can be brought before a court.

Care of child
pending trial
of offender.

45. Where it appears to a court or any justice that an offence under this Act has been committed in the case of any child under eighteen years of age brought before such court

court or justice, and that the health or safety of the child will be endangered unless an order is made under this section, the court or justice may, without prejudice to any power under this Act, make such order as circumstances require for the care and detention of the child until a reasonable time has elapsed for the bringing and disposing of any charge against the person who it appears has committed the offence; and an order under this section may be enforced, notwithstanding that any person claims the custody of the child.

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46. (1) Any constable may take into custody without warrant any person who commits, or who is reasonably suspected by such constable to have committed, an offence under this Act, if the name and residence of such person are unknown to such constable and cannot be ascertained by him.

Arrests
without
warrant.

(2) Where such an arrest is made, the inspector or constable in charge of the station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child in respect of whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognizance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

47. Whenever steps have been taken under any of the last three preceding sections to secure the safety or well-being of a child, and the person charged with committing an offence in respect of such child has been convicted, such child may be disposed of as the court so convicting may direct.

Disposal of
child by
court.

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No. 21.

PART VIII.

STREET TRADING LICENSE.

Issue of
licenses.

48. (1) A written license authorising a male child of or over the age of twelve years to engage, subject to the regulations, in a specified description of street trading may be issued—

- (a) by the Minister or by any officer acting under his authority; or
- (b) in respect of its district by a local authority or some officer of such authority appointed in that behalf with the approval of the Minister.

(2) Such license shall be delivered to the child with a badge to be worn by him as prescribed during such trading.

(3) Such license shall not be issued unless it is shown that the moral or material welfare of the child will not suffer by such trading.

(4) Every license shall be granted for a term of six months, but may be renewed from time to time, and may at any time be cancelled by the Minister or by the authority which has issued it. No charge shall be made for any license or badge.

Penalty for
employing
child in street
trading in
contravention
of Act.

49. If any person employs a child in street trading—

- (a) who is not duly licensed under this Act; or
- (b) who, although so licensed, is employed by him in trading of a description not authorised by the license,

he shall be liable to a penalty not exceeding five pounds, or in case of a second or subsequent offence to a penalty not exceeding ten pounds.

PART IX.

George V,
No. 21.COMMITTAL OF NEGLECTED OR UNCONTROLLABLE
CHILDREN OR JUVENILE OFFENDERS.

50. Any justice may, upon oath being made before him by an officer or other person appointed by the Minister in that behalf that, having made due inquiry, he believes any child to be a neglected or uncontrollable child,—

- (a) issue his summons for the appearance of such child before a court; or
- (b) in the first instance, issue his warrant directing such child to be apprehended.

51. A constable or any person authorised by the Minister in that behalf may, although the warrant is not at the time in his possession, apprehend any child for whose apprehension a warrant has been issued under the last preceding section.

52. (1) If it appears to any justice on information laid before him on oath by any credible person, that there is reasonable cause to suspect that a child is in a place which is a brothel, or where opium or any preparation thereof is smoked, such justice may issue his warrant authorising any person named therein to search in such place for any child, and to take such child to a shelter to be dealt with under this Act.

(2) Any person authorised by warrant under this section to search for a child may enter (if need be by force) into any house, building, or other place specified in the warrant, and may remove such child therefrom.

(3) Every such warrant shall be addressed to and executed by some constable of police, who shall be accompanied by the person making the information (if such person so desire), unless the justice issuing the warrant otherwise directs.

(4) It shall not be necessary in the information or warrant to name the child.

53. Any person authorised by the Minister in that behalf, or any constable of police may without warrant apprehend

George V,
No. 21. apprehend a child who is in a place which is a brothel or where opium or any preparation thereof is smoked, or who he has reason to believe is a neglected or uncontrollable child.

Where child in brothel or opium den, keeper guilty of an offence. **54.** Where a child is found in a brothel or in a place where opium or any preparation thereof is smoked, the keeper or person in charge or apparently in charge of such brothel or place shall be guilty of an offence.

Child placed in shelter and to be brought before court. **55.** Any child apprehended as a neglected or uncontrollable child or juvenile offender shall be taken to a shelter and as soon as practicable thereafter shall be brought before the court by the superintendent of the shelter.

Application to commit uncontrollable child to institution. **56.** Any person having the actual care and custody of a child may apply to a court to commit the child to an institution upon the ground that the child is an uncontrollable child. Such child may be detained at a shelter pending the determination of the court.

Procedure of court. **57.** Where any child is brought before a court as a neglected or uncontrollable child or juvenile offender, or where an application is made under the last preceding section, the court may, if a parent of the child is present, thereupon hear and determine the matter.

If a parent of the child is not present, the court in its discretion may hear and determine the matter or require the parent to be present and remand the child for the purpose of securing the attendance of the parent if practicable.

If the parent refuses to attend without reasonable excuse, the court may issue a warrant to bring him before the court at the hearing, but the parent may be admitted to bail on entering into recognizances, with or without sureties, to attend at the court at the hearing of the matter.

Power of court on the hearing. **58.** If on the hearing the court finds that a child is a neglected or uncontrollable child or juvenile offender it may—

- (a) release the child on probation upon such terms and conditions and for such period of time as the court may think fit; or

(b)

- (b) commit the child for such period of time as the court may think fit to the care of some person who is willing to undertake such care ;
or
- (c) commit the child to an institution :

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Provided that no order of committal of an uncontrollable child on the application of a near relative shall be made unless—

- (a) he proves that he has not by neglect lost control of the child ; and
- (b) security is given to the satisfaction of the court for the making of such payment as, in the opinion of the court, the applicant is able to afford towards the maintenance of such child.

59. Where a child is summarily convicted of an offence for which the penalty is punishment by imprisonment, or imprisonment in default of payment of a fine, the court may—

Power with respect to child liable to be summarily convicted.

- (a) release the child on probation upon such terms and conditions and for such period of time as the court may think fit ; or
- (b) commit the child for such period of time as the court may think fit to the care of some person who is willing to undertake such care ;
or
- (c) commit the child to an institution ; or
- (d) sentence the child according to law.

If the court sentences a child it shall forthwith transmit to the Minister a copy of the proceedings and a statement of the reasons for passing sentence.

The Minister may, with the concurrence of the Attorney-General, order the removal to an institution of the child so sentenced.

60. (1) Where a child is summarily convicted before a court of an offence in respect of which a penalty, damages, or costs are imposed, and there is reason to believe that his parent has contributed to the commission of the offence by wilful default or by habitually neglecting to exercise due care of the child, the court may, on information, issue a summons against such parent, charging him with so contributing to the commission of the offence.

Court may order parent to pay penalty, damages, or costs in certain cases.

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No. 21.

(2) If the court is satisfied that the parent has contributed to the commission by the child of the offence by wilful default, or by habitually neglecting to exercise due care of him, the court may order that the penalty, damages, or costs shall be paid by the parent instead of by the child, and may also order the parent to give security for the good behaviour of the child.

(3) Any sums so imposed and ordered to be paid may be recovered from the parent in the same manner as sums ordered by justices to be paid may be recovered under the Justices Act, 1902.

(4) Proceedings in the nature of an appeal may be taken by the parent, under Part V of the Justices Act, 1902, from any order made against him in pursuance of this section.

Power with respect to child charged with certain indictable offences.

61. (1) Where a child is charged before a court with an indictable offence other than homicide or rape, and is not dealt with summarily, the court may—

- (a) release the child on probation upon such terms and conditions and for such period of time as the court may think fit; or
- (b) commit the child for such period of time as the court may think fit to the care of some person who is willing to undertake such care; or
- (c) commit the child to an institution; or
- (d) commit the child to take his trial according to law.

If the court commits a child to take his trial it shall forthwith transmit to the Minister a copy of the proceedings and a statement of the reasons for its decision.

(2) When a court has committed a child to take his trial for an indictable offence, the Minister may commit the child to an institution, if the Attorney-General shall have entered a nolle prosequi in regard to proceedings against the child:

Provided that the Minister may exercise his powers under this section only if the child or his parent consents, or if evidence on behalf of the child has been given before the court.

62.

62. Where a child is charged before a court with any offence, or is brought before a court as a neglected or uncontrollable child, the court, before making any order or committal, shall give the child or his parent an opportunity to call evidence, and shall hear any evidence that may be tendered by or on behalf of the child.

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No. 21.

Court to hear
evidence on
behalf of
child.

63. When a child has been dealt with under paragraph (a) or (b) of section fifty-eight or fifty-nine, or paragraph (a) or (b) of subsection one of section sixty-one, the following provisions shall apply :—

As to sections
58, 59, or 61.

- (1) Subject to the directions of the Minister, the child shall be in the custody and under the control of the person to whose care he has been committed.
- (2) The child and the premises wherein he resides, or whereto he has been committed, shall be subject to inspection by officers appointed in that behalf.
- (3) Any person having the care of a child as aforesaid who neglects or ill-treats such child shall be liable to a penalty of five pounds, and the child may be removed from his custody and control by the Minister.

64. If a child who has been released upon probation breaks the terms or conditions of the release, he may be apprehended and brought before a court.

As to breach
of terms of
probation.

If it shall appear that such breach has occurred, the court may deal with him under the provisions of this Act, in the same manner as if he had not been released upon probation.

65. Where a child upon his trial has pleaded guilty to or has been convicted of an indictable offence, the judge may, in addition to any other sentence for the offence, commit the child at the expiration of such sentence to an institution, or may, instead of any other sentence, commit the child forthwith to an institution.

Child con-
victed of
indictable
offence may
be sent to
institution.

66. A court or a judge in committing a child to an institution shall do so in general terms, but may recommend to the Minister that the child be sent to an institution of a particular class.

Form of
committal.

67.

George V, **67.** A child on being committed to an institution
No. 21. may, in the discretion of the court or judge, be placed
 Child may be placed in shelter. in a shelter pending the Minister's decision as to his destination.

68. The Minister as soon as practicable shall endorse
 Name of institution to be endorsed on order. on the order of committal the name of the institution and the place where the child is to be detained.

PART X.

AFFILIATION PROCEEDINGS.

Proceedings begun before birth.

69. Where any single woman is with child by any
 Single woman with child may take proceedings against father. man who has made no adequate provision for the payment of preliminary expenses of and incidental to and immediately succeeding the birth of the child, or the expenses of the future maintenance of the child, she, or with her consent the secretary, or any other reputable person on her behalf, may make complaint in writing on oath to a magistrate or court that she is with child by the said man, and that he has made no adequate provision for the payment of the expenses aforesaid; and shall when making such complaint produce evidence on oath, either oral or on affidavit, in corroboration in some material particular of the allegation as to the paternity of the child.

See Imperial Act 35 & 36 Vic., c. 65, s. 3.

The magistrate or court may thereupon summon the man to appear before the court to answer such complaint; or, if the circumstances seem to require it, may issue a warrant for his apprehension.

70.

70. The court shall hear and determine so much of such complaint as relates to the paternity of the child, and may—

(a) order the defendant to deposit with the court a sum not exceeding thirty pounds for preliminary expenses; and

(b) further order the defendant to enter into a recognizance with or without a surety or sureties for such amount as the court determines, as a security that within four months from the birth of the child, and on such day as any court, at any time not later than three months from the said birth, determines, and of which at least fourteen days' notice shall be given to the defendant by or on behalf of the complainant, the defendant will appear and show cause why he should not make such adequate provision as the court determines for the payment of the expenses of the maintenance and education of the child after it has reached the age of three months. Every such order shall specify a date not later than six months thereafter when the order shall lapse if the child has not been born, and if upon such date the child has not been born the order shall lapse and the defendant and his surety or sureties shall be deemed to be released from their recognizances, and the unexpended portion of any moneys paid by the defendant as preliminary expenses shall be repaid to him:

Provided that if the mother has been delivered of a still-born child within the date specified, the court may direct that the whole or such portion of the amount deposited, as it thinks fit, be paid out to her.

The court shall not make an order under this section against the defendant unless it be proved by the evidence of some medical practitioner or by the certificate of some medical practitioner admitted as such evidence with the consent of the defendant that the woman is quick with child, and unless her evidence be corroborated

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No. 21.

Court may
require
defendant to
pay prelimin-
ary expenses.

See S.A. Act,
No. 702, ss. 3,
4; Vic. Act,
No. 1,684,
ss. 2, 3;
Imperial Act,
35 & 36 Vic.,
c. 65, s. 4.

See S.A. Act
702, s. 7.

See S.A. Act
702, s. 6.

George V. in some material particular, or if the court be satisfied
No. 21. that at the time the child was begotten the mother was a common prostitute.

In default of compliance with any order as aforesaid, the court may commit the defendant to prison for any term not exceeding twelve months: Provided that upon compliance with such order, at any time during such term of imprisonment, the defendant shall be released from prison.

Forfeiture of recognizance where defendant does not appear.

71. If upon the day on which the defendant is bound to show cause as aforesaid, or upon any later day to which the proceedings are adjourned he does not appear, and it is proved to the satisfaction of the court that the child has been born, and that the order binding the defendant to show cause has not lapsed, the recognizances entered into by the defendant and sureties before the birth shall be forfeited, and such recognizance shall be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act, 1902; the moneys so secured shall be applicable for the benefit of the mother and child, and the court may proceed in the case ex parte and make an order for the payment by the defendant of a sum for the maintenance and education of the child.

Order after birth where the defendant does appear.

72. If upon the day or later day mentioned in the last preceding section the defendant appears, and it is proved to the satisfaction of the court that the child has been born, and that the order binding the defendant to show cause has not lapsed, the court shall make an order for the payment by the defendant of a sum for the maintenance and education of the child.

Proceedings begun after birth.

Complaint may be made against father of illegitimate child for leaving it without means of support.
 (See Local Act, No. 17, 1901, s. 4; Imperial Act, 35 & 36 Vic., c. 65, s. 3.)

73. In any case where the father of an illegitimate child has left it without means of support, the mother of the child, or the secretary or any other reputable person on behalf of the child, may make complaint on oath to a magistrate or court; and shall, when making such complaint, produce evidence on oath, either oral or on affidavit, in corroboration in some material particular of any

any allegation in such complaint as to the paternity of the child; and upon such complaint being made, the magistrate or court may summon the defendant to appear before the court to answer such complaint, or if the circumstances seem to require it, may issue a warrant for his apprehension.

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In any case where the mother of an illegitimate child has left it without means of support, the secretary or any reputable person on behalf of the infant may make complaint in writing on oath to a magistrate or court, and upon such complaint being made the magistrate or court may summon the defendant to appear before the court to answer such complaint, or, if the circumstances seem to require it, may issue a warrant for her apprehension.

74. The court shall hear and determine the complaint, and may make an order for the payment by the defendant of a sum for the maintenance and education of the child.

Court shall hear and determine complaint and may make order for maintenance.

In any order made under this section against the father of an illegitimate child, the court may further order that the preliminary expenses to an amount not exceeding thirty pounds shall be paid by the defendant, and for the purposes of this and the preceding section any defendant who has failed to pay an adequate sum for preliminary expenses shall be deemed to have left the child without means of support.

75. Where any complaint has been made under this Part by a woman for expenses in respect of a child of which she is about to be or has been delivered, she may, at the hearing of the complaint, be compelled to give evidence; and where complaint has been made by an officer or other reputable person on behalf of a woman for such expenses, she may, at the hearing of the complaint, be compelled to give evidence if it has first been proved to the satisfaction of the court that she has made an allegation as to the paternity of the child. The admissions of a woman in giving evidence under this section shall not be used against her in any criminal prosecution, except for perjury committed while so giving evidence.

Women may in certain cases be compelled to testify.

76.

George V,
No. 21.

Court may
order pay-
ment of
funeral
expenses of
mother and
child.

(See 35 & 36
Vic., c. 65,
s. 4.)

76. (1) Where after the fifth month of pregnancy any illegitimate child has been still-born or having been born alive has died before attaining the age of sixteen years, and where the mother of any such child has died during parturition or in consequence of parturition and the father of such child has not paid an adequate sum—

(a) for preliminary expenses;

(b) for funeral expenses of such mother or child;

any reputable person may make complaint in writing on oath to any magistrate or court that the defendant has failed to pay the same, and shall when making such complaint produce evidence upon oath either oral or on affidavit in corroboration in some material particular of the allegation as to the paternity of the child.

(2) Such magistrate or court may thereupon summon the defendant to appear before the court to answer such complaint; or if the circumstances seem to require it, may issue a warrant for his apprehension.

(3) The court shall hear and determine the complaint and may make an order for payment by the defendant of a sum—

(a) not exceeding thirty pounds for preliminary expenses;

(b) a reasonable sum for the expenses of the funeral:

Provided that no order for preliminary expenses shall be made under this section unless the complaint be made within twelve months of the birth of such child, and no order for funeral expenses shall be made unless complaint be made within twelve months of the death of such mother or child.

Any complaint under this section may include all or any of the expenses mentioned therein.

(4) The provisions of section ninety-three of this Act shall apply to proceedings under this section as if the proceedings were in respect of the maintenance of an illegitimate child:

Provided that where the defendant has been adjudged by any court of competent jurisdiction to be father of any such child this subsection shall not apply, and no further proof of paternity shall be required.

77.

77. In any order under this Part the court may further order the payment of such costs by such persons as it thinks fit.

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No. 21.

Court may
order payment
of costs.

78. If it appears to the court that both the father and mother of an illegitimate child are able to contribute to any of the expenses mentioned in the preceding sections of this Part, the court, in making any order, may direct the payment of such expenses by both the father and mother in such proportions and in such manner as it thinks fit; and if it appears to the court that the mother only is able to so contribute, it may direct the payment by her alone.

Mother also
to contribute
to expenses of
maintenance.

(See Deserted
Wives and
Children Act,
No. 17, 1901,
s. 7; N.Z. Act,
58 Vic. No. 22,
s. 10.)

79. Every order adjudging any sum to be paid for the maintenance of a child may be made to take effect from a date not earlier than three months immediately preceding the date of the order, or, if a previous order has been made, from the date when the last preceding order ceased to have effect, and shall be of full force and validity until the child has, if a male, attained the age of fourteen years, or has, if a female, attained the age of sixteen years, or until the death of such child if such death occurs within the respective periods above mentioned:

Period for
which orders
for mainten-
ance may be
made.

(f. Imperial
Act, 35 & 36
Vic, c. 65,
s. 5; N.Z.
Act, 58 Vic.
No. 22, s. 9.)

Provided that the court may in the order direct that the payments to be made under it in respect of a male child shall continue until the child attains the age of sixteen years, in which case such order shall be in force until that period:

Provided also that for the purpose of recovering money previously due under an order it shall always remain of full force and validity.

80. When an order is made under this Part for the payment of any expenses other than preliminary expenses the court may, immediately after pronouncing its decision, or at any time during the currency of the order on notice being given to the defendant, require the defendant to enter into a recognizance with or without sureties for the due performance for a period not exceeding twelve months of such order, and in default of the defendant's immediately entering into such recognizance with the required sureties if any, the court may

Security for
payment of
amount may
be ordered.

Deserted
Wives and
Children Act,
No. 17, 1901,
s. 8.

George V, No. 21. may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with for the period specified in the recognizance.

The court, on due proof that the conditions of such recognizance have not been complied with by the defendant may ex parte forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided for by the Fines and Forfeited Recognizances Recovery Act, 1902.

Further orders may be made as to mode of payment of expenses.
Deserted Wives and Children Act, No. 17, 1901, s. 10.

81. Where an order has been made under this Part for the payment of expenses, or of moneys secured under recognizances, the court may, in a summary way and with or without any application for that purpose, make such orders in writing as it thinks necessary for better securing the payment and regulating the receipt of the expenses or moneys ordered to be paid, or for investing and applying the proceeds of the goods or rents ordered and directed to be sold or collected, or for ensuring the due appropriation of such expenses or moneys or for causing the child in respect of whom the order was made to be properly brought up and educated.

Seizure of defendant's goods.
Ibid. s. 9.

82. In any order under this Part the court may, by the said order, or at any time during the currency of such order, authorise and direct some person forthwith to seize and sell the defendant's goods and to demand and to receive his rents, or any moneys to which he is entitled or about to become entitled, or such portions of the said goods or rents or moneys as the court thinks fit, and to appropriate the proceeds towards the payment of the moneys ordered in such manner as it from time to time directs, and if it appears on oath that the defendant has theretofore usually resided in New South Wales and has left the said State, the like order may be made and authority given by such court although no summons or warrant has been issued.

A copy of the orders provided for in sections eighty-one and eighty-two, certified to by the clerk of the court, shall be served on any person affected thereby. Any person who disobeys or neglects to comply with any such order served on him shall be guilty of an offence under this Act.

83. On complaint on oath being made to the court or magistrate that any person has disobeyed or has not complied with any order made under this Part such court or magistrate may summon such person or issue his warrant for the apprehension of such person to answer such complaint. The court may at any time in a summary way inquire into any such disobedience or non-compliance with any such order, and may enforce compliance, or may punish non-compliance with such order by the committal of the offender until such order has been complied with, and until the payment of any costs incidental to the hearing of the said complaint which may be awarded by the court.

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No. 21.
Disobedience
of order may
be punished.

84. The court from time to time may, upon application made by or on behalf of the mother or child or by or on behalf of the father, and upon notice given in such manner as the court shall direct to all parties to be affected thereby, vary any order made under this Part. On the determination of such application the court may award costs to the successful party.

Court may
vary order.

A man adjudged to be the father of a child may apply to the court for leave to apply to have the order varied on the ground that evidence material to the question of the paternity of the child was not available to or known of by him at the date of the adjudication, and the court may on hearing the evidence grant or refuse such leave. Except in pursuance of leave so granted the question of the paternity of the child shall not be raised on an application to vary an order.

85. (1) Every summons or notice shall be served by a constable or other person upon the person to whom it is directed by delivering it to him personally, or if he cannot be conveniently met with, then by leaving it with some person for him at his last or most usual place of abode.

Service of
summons or
notice.

(2) Service of a summons or notice in manner aforesaid may be proved by the oath of the constable or other person who served it, or by affidavit, or otherwise.

86. (1) If a defendant against whom a summons has been issued under this Part does not appear in accordance

Court may
proceed
ex parte.

George V, accordance therewith the court, upon proof of the service
No. 21. of the summons, may issue a warrant for his apprehension, or may proceed in the case ex parte.

(2) In every case where a warrant has been issued, and the defendant cannot, after strict inquiry and search, be found to be taken thereon, the court may in like manner proceed in the case ex parte.

Warrant may issue in certain cases.

87. Any magistrate or court on being satisfied by complaint on oath that any defendant has removed or is about to remove out of New South Wales or to remote parts thereof to defeat any of the provisions of this Part or any order made hereunder may issue a warrant for the apprehension of such defendant to be dealt with according to law :

Provided that in lieu of issuing such warrant the magistrate or court may issue a summons requiring such defendant to appear before the court to answer such complaint. Upon the appearance of such defendant he may at the discretion of the court be ordered to enter into a recognizance with sureties for the due performance for a period not exceeding twelve months of such order. And in default of defendant immediately entering into such recognizance with the required sureties, the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with.

The court on due proof that the conditions of such recognizance have not been complied with by the defendant may ex parte forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act of 1902.

Certain breaches of Act indictable when offender leaves New South Wales.

(See N.Z., 1894, No. 22, s. 17; Vic., 1901, No. 1, 1757, s. 4.)

88. (1) Every person who wilfully refuses or neglects to comply with an order made against him under this Part, and goes or attempts or makes preparation to go beyond New South Wales, or to reside or is resident either permanently or temporarily beyond New South Wales, shall be deemed to be guilty of an indictable offence, punishable by imprisonment with hard labour for a term not exceeding twelve months.

(2)

(2) No person convicted of an offence against this section shall be liable to any other penalty or punishment for such offence. **George V, No. 21.**

89. A committal to prison or conviction of an offence under this Part shall not prevent the making or operation of any order for the payment of money or the doing of any act by such person which may be lawfully made. Committal to prison not to prevent making or operation of orders.

90. Whenever the Legislature of any British possession beyond the limits of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, and other than New South Wales, makes provision whereby the offence of desertion of children, and going to reside beyond the limits of such possession, is constituted an offence whether punishable on indictment or otherwise by imprisonment for a term of twelve months or more, then and in every such case every person accused of such offence and coming to New South Wales may be there arrested and dealt with under and pursuant to the provisions of the Act of the Imperial Parliament of Great Britain and Ireland, intituled the Fugitive Offenders Act, 1881, or any Act amending the same. Persons deserting children in other colony, &c., may be arrested in New South Wales. (See Vic., 1901, No. 1,737, s. 5; N.Z. Act, 58 Vic. No. 22, s. 23.) 44 & 45 Vic., c. 69; 7 V.S. 321.

91. Every person aggrieved by an order of a court or by the dismissal of a complaint under this Part may appeal to a court of quarter sessions against such order in the manner provided by the Justices Act, 1902, in respect of appeals to courts of quarter sessions: Appeal to quarter sessions or district court.

Provided that where an order is made by the court at any place, and a district court is held nearer to that place than a court of quarter sessions, such appeal may be made to such district court in the same manner as an appeal may be made to a court of quarter sessions under the said Act:

Provided also that where an order is made before birth respecting the paternity of a child, and the party aggrieved by the order gives notice of intention to appeal to a court of quarter sessions or district court, as the case may be, and desires that the appeal shall not be heard before the birth of the child, such party shall state his or her desire in the notice, and in such case the appeal shall

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No. 21. shall be heard at the first court of quarter sessions or district court, as the case may be, held after a period of one month from the birth has elapsed, or at any court of quarter sessions or district court succeeding such first held court and to which the hearing is postponed, but no appeal shall in such case be heard earlier than such first held court :

Provided also that at the request of either party the child shall be produced in court. Where an appeal respecting the paternity of a child is to be heard after the birth of the child, no order shall be made under sections seventy-one and seventy-two of this Act until and unless such appeal has been heard and determined :

Provided also that where any order has been made ex parte under subsection two of section eighty-six of this Act the defendant may appeal as in this section provided, at any time within one month of the time when the fact of such order having been made came to knowledge, the onus of proving such time to lie upon the defendant.

Where order
quashed, &c.

92. Where an order of court has been quashed, or an order of dismissal of a complaint has been confirmed by a court of competent jurisdiction on appeal as provided by section ninety-one, fresh proceedings may by leave of a court be brought at any time under sections sixty-nine, seventy-three, or seventy-six in respect of the same cause of complaint or subject-matter.

Evidence
necessary for
order for
maintenance.

93. Where any proceedings are taken under this Act, in respect of the maintenance of an illegitimate child, of which the defendant is alleged to be the father, no order shall be made—

- (a) upon the evidence of the mother, unless her evidence be corroborated in some material particular; or
- (b) if the court is satisfied that at the time the child was begotten the mother was a common prostitute.

Application
of Justices
Act, No. 27,
1902.

94. Sections sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-eight, sixty-nine, seventy, seventy-one, seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one,

eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-seven, eighty-nine, ninety, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred and one, one hundred and two, one hundred and three, one hundred and four, one hundred and five, one hundred and six, one hundred and seven, one hundred and eight, one hundred and nine, one hundred and ten, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen, one hundred and fifteen, one hundred and sixteen, one hundred and seventeen, one hundred and eighteen, one hundred and nineteen, one hundred and twenty, one hundred and twenty-one, one hundred and fifty-two, and one hundred and fifty-three of the Justices Act, 1902, shall mutatis mutandis apply to this Part of this Act, so far as such sections are not inconsistent with such Part or the Deserted Wives and Children Amending Act, 1913: Provided that subsection two of section eighty-two shall not affect the provision relating to periodical payments under such Part, or to amounts ordered to be paid under sections seventy, seventy-four, and seventy-six of this Part.

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95. A court for the purpose of dealing with proceedings under sections sixty-nine, seventy-three, and seventy-six of this Act shall have all the powers of a justice or justices under section sixty-one, sixty-six, and seventy-one of the Justices Act, 1902, and the provisions of sections sixty-two, sixty-three, and sixty-four of that Act shall mutatis mutandis apply to the forms, service, and proof of service of any summons or warrant issued by the court under this Act.

Powers of
court under
secs. 69, 73,
and 76.

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PART XI.

CHILDREN'S COURTS.

Governor
may establish
special courts
for dealing
with
children.

96. (1) The Governor shall by proclamation establish special courts to be called children's courts.

Every such court shall consist of a special magistrate and shall have jurisdiction within the area named in a proclamation.

(2) In places not within any such area the jurisdiction of a court shall be exercised by a special magistrate, or any two justices.

(3) Such special magistrate shall possess the qualifications required for the office of police or stipendiary magistrate under the Public Service Act, 1902.

Powers of
court.

97. Within the area so named a court and the magistrate constituting such court—

- (a) shall exercise the powers and authorities which are possessed by special, stipendiary or police magistrates, courts of petty sessions, or justices in respect of children and of offences committed by or against children;
- (b) shall exercise the powers and authorities of a justice or justices to hear and determine complaints under the Deserted Wives and Children Act, 1901;
- (c) shall hear and determine complaints, informations, and applications under this Act.

Jurisdiction
of other
courts to
cease.

98. On and after the establishing of a court, the jurisdiction of every court of petty sessions in respect of the matters as to which the court has jurisdiction, except those matters in which a justice or justices has or have jurisdiction under the Deserted Wives and Children Act, 1901, shall cease to be exercised within the area proclaimed:

Provided that nothing in this section shall abridge or prejudice the ministerial powers of magistrates or justices in cases of committal for trial, or their powers to take any information or issue any summons, or grant, issue, or endorse any warrant, or admit to bail:

Provided

Provided also that no conviction, order, judgment, or proceeding made or given by or had before a court of petty sessions in contravention of this section shall be invalidated or affected by reason only of such contravention.

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99. A court shall be held—

- (a) where practicable, in the proximity of a shelter;
- (b) in some building or room approved of in that behalf by the Minister: Provided that if a court room or police office is so approved of, the hearing shall not take place at an hour when the ordinary court business is being transacted.

Children's
courts not
held in
ordinary
courts.

100. (1) At any hearing or trial by a court under this Act, the court may order that any persons not directly interested in the case shall be excluded from the court-room or place of hearing or trial.

Exclusion of
persons from
hearing.

(2) Upon and during the hearing of any complaint made under Part X of this Act, no person shall be or be permitted to be present in court except the following—

- (a) the adjudicating magistrate, the secretary, or an officer deputed by him, the officers of the court, and a member of the police force;
- (b) the complainant and the defendant, and their respective barristers and solicitors;
- (c) the mother or sister, or other relative or friend of the complainant, if desired by such complainant;
- (d) any person whilst being examined as a witness; and
- (e) the mother or sister or female friend of any female witness, if desired by such witness whilst being examined,

unless the court shall, in the interests of justice, permit any other person to be present.

(3) The provisions of the last preceding subsection shall apply, mutatis mutandis, to the hearing of an appeal under section ninety-one of this Act.

101.

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No. 21.
Appeal from
children's
court.

101. Proceedings in the nature of appeal to the Supreme Court or a judge thereof, or to a Court of Quarter Sessions or a District Court, from any determination, conviction, or order of a court may be taken by a child or by a parent on behalf and in the name of his child under Part V of the Justices Act, 1902. The provisions of the said Part applicable to justices in the exercise of their summary jurisdiction shall apply to a court:

Provided that in place of the release of the appellant from custody upon entering into recognizances or depositing any money with the court, he may be committed by the court from which the appeal is made to a shelter pending the determination of the appeal:

Provided also that this section shall not apply to an order committing a child to take his trial.

The judge hearing the appeal may order that any person not directly interested in the case shall be excluded from the court-room.

Application
of Justices
Act.

102. The Justices Act, 1902, so far as it is not inconsistent with this Act shall apply to this Act with the exception of Part X.

PART XII.

REGULATIONS.

Governor
may make
regulations.

103. (1) The Governor may make regulations for carrying out the objects and purposes of this Act.

(2) Such regulations may provide for the payment of fees and may impose a penalty not exceeding thirty pounds for any breach thereof. Any such penalty may be enforced by and recovered before a court.

(3) Such regulations shall—

- (i) be published in the Gazette;
- (ii) take effect from the date of publication or from a later date to be specified in such regulations; and

(iii)

- (iii) be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and if not, then within fourteen days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

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PART XIII.

GENERAL AND SUPPLEMENTAL.

104. (1) Every person charged with committing an offence against the provisions of this Act may be prosecuted before a court.

(2) Every person guilty of an offence against the provisions of this Act shall be liable, upon conviction before a court, unless some other penalty or punishment is expressly provided, to a penalty not exceeding one hundred pounds, or to imprisonment for a period not exceeding twelve months, or to both penalty and imprisonment.

105. If it be made to appear to any magistrate, on information laid before him on oath, that there is reason to believe that any person is offending against the provisions of this Act in any house or place, or that any of the provisions of this Act are being infringed in any house or place, such magistrate may issue his warrant authorising an officer to search any house or place therein named, at any hour of the day, or at any hour of the night not later than ten o'clock, for the purpose of ascertaining whether there is or has been therein or thereon an infringement of the provisions of this Act.

Such

George V,
No. 21. Such officer may, if he thinks it necessary, be accompanied by a medical practitioner, or by a police officer, or by both.

Power of
search and
arrest, and to
place child in
safety.

106. (1) Whenever it appears to any magistrate, or to any justice, on information made before him on oath by any person who, in the opinion of the magistrate or justice, is bona fide acting in the interest of any child, that there is reasonable cause to suspect that such child, being a child under the age of eighteen years, has been or is being ill-treated or neglected in a manner likely to cause the child unnecessary suffering, or to be injurious to its health, such magistrate or justice may issue a warrant authorising any officer or constable of police named therein to search for such child; and if it is found to have been or is then being ill-treated or neglected in manner aforesaid, to take it to and detain it in a place of safety until it can be brought before a court; and the court before whom the child is brought may commit the child to the custody of some person named by the court, or make such other order as to the custody of the child as the court may think fit.

(2) The magistrate or justice issuing such warrant may, by the same warrant, cause any person accused of any offence in respect of the child to be apprehended, and proceedings to be taken for punishing such person according to law.

(3) Any person authorised by warrant under this section to search for any child, and to take it to and detain it in a place of safety, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child therefrom.

(4) Every warrant issued under this section shall be addressed to and executed by an officer of police, who shall be accompanied by the person giving the information, if such person so desire, unless the magistrate or justice otherwise directs; and the person to whom the warrant is addressed may be accompanied by a medical practitioner.

(5) It shall not be necessary in any information or warrant issued under this section to name any particular child.

107.

107. (1) If a Children's Court has reason to believe that a child, male or female, is suffering from venereal disease, the court may at any time, either before or after committal of such child, order an examination to be made of such child by a medical practitioner, either male or female.

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Child believed to be suffering from venereal disease.

(2) In the event of the medical practitioner reporting that any child is so suffering, the court shall forthwith notify the Commissioner in writing, who may thereupon deal with such child as provided in Act No. 46, 1918.

108. (1) No child shall be apprenticed, boarded-out, or placed out under the provisions of this Act, unless the child has been—

Application of Act No. 46, 1918, to State wards.

- (a) examined by a medical practitioner ; and
- (b) certified by such medical practitioner as being free from venereal disease, or no longer liable to convey infection.

(2) Such certificate shall be obtained at the expense of the Child Welfare Department, and retained by it.

(3) Any person contravening this section shall be liable to a penalty not exceeding twenty pounds.

109. (1) Where a person is charged with committing an offence under this Act in respect of two or more children the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty in respect of each child unless upon separate informations or summonses.

Information or summons.

(2) The same information or summons may also charge the offences of assault, ill-treatment, neglect, abandonment or exposure, together or separately, but when charged together the person charged shall not be liable to separate penalties.

(3) Where an offence charged is a continuous offence, it shall not be necessary to specify in the information or summons the date of the acts constituting the offence.

110. (1) Where in any proceeding against any person for an offence under this Act the child in respect of

Evidence in certain cases.

of

George V, of whom the offence is charged to have been committed,
No. 21. or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of such child may be received though not given upon oath if in the opinion of the court such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. And the evidence of such 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.

A person shall not be convicted of the offence charged unless the testimony admitted by virtue of this section, and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused.

Any child whose evidence is received as aforesaid, and who wilfully gives false evidence, shall be guilty of a misdemeanour, but no prosecution shall be instituted under this section without the leave of the court before which such evidence was given.

(2) Where a justice is satisfied by the evidence of a medical practitioner that the attendance before a court of any child in respect of whom an offence under this Act is alleged to have been committed would be injurious or dangerous to its health, the justice may take in writing the statement of such child in pursuance of section four hundred and six of the Crimes Act, 1900, as if the child were dangerously ill, and in the opinion of the medical practitioner, not likely to recover.

(3) Where in any proceedings with relation to an offence under this Act the court is satisfied by the evidence of a medical practitioner that the attendance before the court of any child in respect of whom an offence is alleged to have been committed would be injurious or dangerous to its health, any deposition taken under section four hundred and six of the Crimes Act, 1900, or any statement of the child taken under this section, may be read in evidence, and shall have effect in like manner as if it were proved that the child were so ill as to be unable to travel, or (in the case of
any

any such statement) that there was no reasonable probability that the child would ever be able to travel or give evidence; but the same proviso shall apply as in the case of the reception of evidence under the first subsection.

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No. 21.

(4) Where in any proceedings with relation to an offence under this Act the court is satisfied by the evidence of a medical practitioner that the attendance for the purpose of giving evidence before the court of any child in respect of whom the offence is alleged to have been committed would be injurious or dangerous to its health, and 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.

111. If any person makes any false representation, or forges any certificate, or makes use of any forged certificate knowing it to be forged, with intent to obtain the registration either of such person or of any other person under this Act, or falsifies any register kept in pursuance of this Act, or furnishes false particulars of any matter which is required to be entered in such register, such person shall be guilty of an offence and on conviction thereof shall be liable to a penalty not exceeding twenty-five pounds or to imprisonment for a period not exceeding six months.

Forgery of
certificate,
&c.

112. Any person who hinders or obstructs any person in the exercise of his duty under this Act, shall be guilty of an offence.

Obstruction of
person carrying
out provisions
of Act.

113. Any justice may issue a warrant for the arrest of any child boarded-out, placed-out, apprenticed, or adopted who has absconded or been illegally removed.

Arrest of
absconding
child.

114. Any person who ill-uses or neglects to perform his duty towards any child boarded-out, apprenticed or adopted, or violates any regulation concerning such child, shall be guilty of an offence.

Penalty for
ill-usage of
child.

115. Where a person is charged with an offence under this Act in respect of a child who is alleged in the charge or indictment to be under any specified age, and the child appears to the court to be under that age, such child shall, for the purposes of this Act, be deemed to be under that age unless the contrary is proved.

Presumption
of age of
child.

116.

**George V,
No. 21.** **116.** Nothing in this Act contained shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer punishment to such child.

Saving parental right of punishment.

A person not to be twice punished for the same offence. **117.** Where a person is charged with an offence under this Act, for which he is also punishable under any other Act or at Common Law, he may be prosecuted and punished either under this Act or under any other Act, or at Common Law, but no person shall be punished twice for the same offence.

Neglect or ill-treatment of child. **118.** Any person, whether the parent of the child or not, who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid, or lodging for any child in his care or custody, or assaults, ill-treats, or exposes any child, or causes or procures any child to be neglected, assaulted, ill-treated, or exposed, if such neglect, assault, ill-treatment, or exposure has resulted, or appears likely to result, in bodily suffering or permanent or serious injury to the health of such child, shall be guilty of an offence.

Minister may take proceedings for maintenance. **119.** The Minister may institute legal proceedings—

- (a) against any parents for moneys expended in the maintenance of their children, when satisfied that such parents are in a position to pay for such maintenance; and
- (b) against the parents of illegitimate children for the recovery of maintenance money, and such parents shall be liable jointly and severally.

Money of ward to be placed to separate fund. **120.** All money and other property to which any ward shall be entitled shall be placed to a separate fund and shall be under the control of the Minister for the benefit and maintenance of such ward.

Expenditure of money appropriated by Parliament. **121.** The expenses incurred in respect of the administration of this Act shall be defrayed from such moneys as Parliament shall appropriate for that purpose, and if there are no such moneys available, such expenses shall be defrayed out of the Consolidated Revenue Fund by warrant under the hand of the Governor directed to the Colonial Treasurer.

The

The said Treasurer shall pay out of the said fund only such charges as are certified to be correct under the hand of the Minister and countersigned by the secretary, and all payments in pursuance of such warrants shall be credited to the said Treasurer, and the receipt of the person to whom the same are paid shall be his discharge in respect of the sum therein mentioned in the passing of his accounts. All payments made under any such warrant shall be recouped out of the vote for the purpose of this Act so soon as there are sufficient funds to the credit of such vote.

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No. 21.

122. The Minister shall furnish a report to Parliament every year on the working of this Act.

Report to be
furnished to
Parliament.

PART XIV.

ADOPTION OF CHILDREN.

123. In this Part, unless the context otherwise requires,—

Interpre-
tation.

“ Adopted child ” means child in respect of whom an order of adoption has been made.

“ Adopting parent ” means any person who by an order of adoption is authorised to adopt a child, and in case of any such order being made in favour of a husband and wife on their joint application, includes both husband and wife.

“ Court ” means the Supreme Court in its equitable jurisdiction.

124. Upon application made to the court by—

- (a) husband and wife jointly ; or
- (b) a married woman, with the written consent of her husband ; or
- (c) a woman, whether married or unmarried, who, in the opinion of the court, is at least eighteen years older than the child ; or

By whom
female child
may be
adopted.
See W.A.
Act, 1896,
No. 6, s. 3.

(d)

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(d) a married man who, in the opinion of the court, is at least thirty years older than the child, an order of adoption of a female child may be made in favour of the applicant in the form prescribed.

By whom
male child
may be
adopted.
See W.A.
Act, 1896,
No. 6, s. 4.

125. Upon application made to the court by—

- (a) husband and wife jointly ; or
- (b) a married man alone, but with the written consent of his wife ; or
- (c) a man, whether married or unmarried, who, in the opinion of the court, is at least eighteen years older than the child ; or
- (d) a woman, whether married or unmarried, who, in the opinion of the court, is at least thirty years older than the child,

an order of adoption of a male child may be made in favour of the applicant in the form prescribed.

Matters to be
proved before
order made.

Ibid. s. 5.

126. An order of adoption shall not be made unless the court is satisfied—

- (a) that the person applying for the order is of good repute and a fit and proper person to have the care and custody of the child, and of sufficient ability to bring up, maintain, and educate the child ; and
- (b) that the welfare and interest of the child will be promoted by the adoption ; and
- (c) if the child is over the age of twelve years, that the child consents to the adoption ; and
- (d) that the parents of the child or such one of them as is living consent or consents to the adoption, or if the child is illegitimate that the mother consents to the adoption, or if the child has a guardian, that such guardian consents to the adoption :

Provided that the consent of any person whose consent is required to be given by this paragraph may be dispensed with if the court is of opinion that such person has deserted or abandoned the child.

Effect of
order.

Ibid. ss. 7, 8.

127. When an order of adoption is made, for all purposes civil and criminal, and as regards all legal and equitable rights and liabilities, the adopted child shall be deemed to be a child of the adopting parent, and the adopting

adopting parent shall be deemed to be a parent of the adopted child, as if such child had been born to such adopting parent in lawful wedlock, and the order of adoption shall terminate all rights and liabilities existing between the child and his natural parents other than the right of the child to take property as heir or next of kin of his natural parents or of their lineal or collateral kindred :

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Provided always that such adopted child shall not by such adoption—

- (a) acquire any right, title, or interest in any property under any deed, will, or instrument whatsoever made or executed prior to the date of such order of adoption unless it is expressly so stated in such deed, will, or instrument ; nor
- (b) be entitled to take any property limited to the heirs of the body of the adopting parent ; nor
- (c) be entitled to take any property as next of kin to any lineal or collateral kindred of the adopting parent ; nor
- (d) be entitled to take any property as next of kin to any child of the adopting parent.

128. When an order of adoption is made the adopted child shall take the surname of the adopting parent in addition to his proper name.

Child to take
surname of
adopting parent.
See W.A. Act
1896, No. 6, s. 10.

129. (1) The judges of the Supreme Court or any three of them may make rules for carrying into effect the provisions and objects of this Part and for providing for the registration of orders of adoption and the payment of fees.

Power to
make rules.

(2) Until such rules are made any application under this Part shall be by motion, and the practice of the Equity Court shall apply thereto.

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THE SCHEDULE.

Date of Act.	Name of Act.	Extent of repeal.
Act No. 40, 1900	Crimes Act, 1900	... So much of s. 429 as is inconsistent with this Act.
Act No. 17, 1901	Deserted Wives and Children Act, 1901.	So much of the Act as relates to complaints in respect of illegitimate children, and to proceedings consequent upon or incidental to such complaints.
Act No. 61, 1901	State Children Relief Act, 1901.	The whole.
Act No. 47, 1902	Children's Protection Act, 1902.	The whole.
Act No. 27, 1904	Infant Protection Act, 1904.	The whole.
Act No. 16, 1905	Neglected Children and Juvenile Offenders Act, 1905.	The whole.