

**CHILD WELFARE (AMENDMENT) ACT.**

**New South Wales**



**ANNO SEXTO DECIMO**

**ELIZABETHÆ II REGINÆ**

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**Act No. 27, 1967.**

An Act relating to proceedings before children's courts; to make provision for the care of intellectually handicapped children and young persons; for these and other purposes to amend the Child Welfare Act, 1939, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 30th March, 1967.]

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

1. (1) This Act may be cited as the "Child Welfare (Amendment) Act, 1967."
- (2) Short title, citation and commencement.

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No. 27, 1967      (2) The Child Welfare Act, 1939, as amended by subsequent Acts and by this Act, may be cited as the Child Welfare Act, 1939–1967.

(3) Section three of this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 17, 1939.      2. The Child Welfare Act, 1939, as amended by subsequent Acts, is amended—

Sec. 16.  
(Exclusion of persons from hearing generally.)

(a) (i) by inserting at the end of subsection two of section sixteen the words “The powers exercisable by the court under this subsection may be exercised notwithstanding that the child, young person or person may be directly interested in the case.”

(ii) by inserting at the end of the same section the following new subsection :—

(4) The name of—

- (a) any child or young person who appears as a witness before a court,
- (b) any child involved in a hearing or trial by a court or to whom a hearing or trial by a court relates, or
- (c) a young person involved in a hearing or trial by a court or to whom a hearing or trial by a court relates where persons not directly interested in the case have been excluded from such hearing or trial,

shall not in a case to which paragraph (a) or (b) applies be published or broadcast, and in

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a case to which paragraph (c) applies be published or broadcast unless the court otherwise directs, and any report (other than an official report) of the proceedings of a court shall not include information which identifies or may lead to the identification of any child or young person the publication or broadcasting of whose name is prohibited by this section. No. 27, 1967

- (b) by inserting at the end of section seventeen the words "and to a trial of a child or young person where the child or young person has been committed by a court to take his trial according to law"; Sec. 17.  
(Exclusion of persons from hearing of appeal.)

- (c) by omitting from the definition of "Child care centre" in subsection one of section twenty-eight the words "to none or only one of whom he is related" and by inserting in lieu thereof the words "to whom he is not related"; Sec. 28.  
(Interpretation.)

- (d) by inserting at the end of subsection two of section eighty-nine the following new subsection :— Sec. 89.  
(Court to hear evidence on behalf of a child.)
- (3) Notwithstanding the provisions of any other Act or of any rule of law or practice to the contrary, the reports referred to in subsection two of this section shall not be open to inspection other than by a court, a court of superior jurisdiction, officers of either such court, officers of the Child Welfare Department and the Intellectually Handicapped Persons Review Tribunal unless either such court otherwise directs.

3. The Child Welfare Act, 1939, as amended by subsequent Acts, is further amended— Further amendment of Act No. 17, 1939.

- (a) by omitting from section two the matter relating to Part IX and by inserting in lieu thereof the following matter :— Sec. 2.  
(Parts of Act.)

PART IX.—INTELLECTUALLY HANDICAPPED PERSONS—ss. 43–48M.

(b)

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| <b>No. 27, 1967</b><br>Sec. 4.<br>(Interpretation.)<br><br>Sec. 10.<br>(Care of the person of wards.)<br><br>Sec. 152.<br>(Imposition or attempted imposition.)<br><br>Subst.<br>Part IX. | (b) by omitting paragraph (d) of the definition of "Ward" in subsection one of section four;<br><br>(c) by omitting from section ten the words "or of a home for mentally defective children";<br><br>(d) by omitting from subsection two of section one hundred and fifty-two the words and figures "or Part VI" and by inserting in lieu thereof the words and figures ", Part VI or Part IX";<br><br>(e) by omitting Part IX and by inserting in lieu thereof the following Part : — |
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## PART IX.

## INTELLECTUALLY HANDICAPPED PERSONS.

Interpretation.

43. (1) In this Part unless the context otherwise requires,—

"Court" means a special magistrate sitting as and constituting a children's court.

"Intellectual handicap" means a condition characterised by an inadequate social adjustment, a retarded rate of maturation and a significant limitation of learning capacity due to arrested or limited development of intellectual functioning; and derivatives therefrom have a like meaning.

"Intellectually handicapped person" means a person who is being dealt with as an intellectually handicapped person under the provisions of this Part.

"Organisation" means a society, association or other group which provides facilities for the accommodation, maintenance, care, training, treatment, protection or supervision of persons

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persons who are intellectually handicapped No. 27, 1967  
and which is for the time being approved  
by the Minister.

“Tribunal” means the Intellectually Handicapped  
Persons Review Tribunal.

(2) For the purposes of this Part, unless the context otherwise requires, a reference in the expressions “adopted boarder”, “foster parent” and “place of safety” to a child or young person shall be read and construed as a reference to an intellectually handicapped person.

44. (1) There shall be an Intellectually Handi- Tribunal.  
capped Persons Review Tribunal consisting of such persons as the Governor may appoint. One of such persons shall by the instrument of his appointment be the Chairman of the Tribunal and one of such persons shall by the instrument of his appointment be the Deputy Chairman of the Tribunal. In the absence of the Chairman the Deputy Chairman may exercise the powers, authorities, duties and functions of the Chairman.

(2) The persons appointed to the Tribunal shall comprise the following classes of persons :—

- (a) medical practitioners;
- (b) barristers or solicitors;
- (c) persons having knowledge of and experience in administration;
- (d) persons having knowledge of and experience in education;
- (e) persons having knowledge of and experience in psychology;
- (f) persons having knowledge of and experience in social work, and

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(g) persons in the opinion of the Governor having other suitable qualifications or experience.

(3) Three and not more than five members (of whom one shall be a medical practitioner and another a barrister or solicitor) selected by the Chairman shall be competent to transact any business of the Tribunal and to exercise any of the powers, authorities, duties and functions conferred or imposed on the Tribunal by or under this Act.

(4) Proceedings of the Tribunal shall, subject to this Act and the regulations, be governed by rules approved by the Minister.

(5) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment by the Governor of any member of the Tribunal and any member so appointed shall not as a member be subject to the provisions of any such Act during his term of office.

(6) Members of the Tribunal may be paid such fees and allowances as may from time to time be determined by the Governor.

Governor  
may estab-  
lish homes  
and hostels.

45. (1) The Governor, by proclamation, may establish and constitute homes and hostels for the reception, retention, maintenance, care, education and training of intellectually handicapped persons and may assign any name to such a home or hostel.

(2) Every such home or hostel shall be inspected once at least in every three months by an officer appointed for that purpose by the Minister. Such officer shall, after each inspection, submit to the Minister a report dealing with the matters prescribed.

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46. (1) When the Minister is satisfied that— No. 27, 1967

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

Certain  
wards may  
be dealt  
with as  
intellectually  
handicapped  
persons.

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

the Minister may make an order that such ward be dealt with as an intellectually handicapped person under the provisions of this Part.

(2) Before an order is made under subsection one of this section the Minister shall—

- (a) give notice of his intention to make such an order to the person who was the guardian of the ward immediately before the Minister became his guardian if the whereabouts of such person are known or can be ascertained by reasonable inquiry; and
- (b) consider such representation, if any, as such person makes within a period of twenty-one days after notification has been given to such person as aforesaid.

(3) The guardian of a child or young person may request the Minister to make an order that such child or young person be dealt with as an intellectually handicapped person under the provisions of this Part, and the Minister may make such an order if he is satisfied that—

- (a) such child or young person is intellectually handicapped to such a degree that he requires, otherwise than for continuous

medical

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medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others, and

- (b) the interests of such child or young person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of this Part.

Court may  
order child  
or young  
person to  
be dealt  
with as  
intellectually  
handicapped  
person.

47. (1) Where a child or young person is charged before a court with any offence (not being an indictable offence mentioned in subsection one of section eighty-six of this Act), or is brought before a court as, or is charged with being, a neglected or uncontrollable child or young person, the court, on the application of an officer authorised in that behalf by the Minister, may, if it is satisfied that—

- (a) a prima facie case has been made out,  
(b) the child or young person is intellectually handicapped to such a degree that he requires, otherwise than for continuous medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others, and  
(c) the interests of the child or young person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of this Part,

make an order that the child or young person be dealt with as an intellectually handicapped person under the provisions of this Part in lieu of making an order under the provisions of section eighty-two or section eighty-three of this Act.

(2) Before making an order in respect of a child or young person under subsection one of this section, the court, in addition to giving consideration to the matters the subject of reports under subsection two of section eighty-nine of this Act, shall give consideration to reports concerning the developmental



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developmental history, social functioning, recent No. 27, 1967  
psychological examination and a recent medical  
examination of the child or young person.

The provisions of subsection three of section eighty-nine of this Act shall apply, *mutatis mutandis*, to such last-mentioned reports.

(3) Where the person in charge of an organisation or any other reputable person approved by the Minister is willing to undertake the care of the child or young person in respect of whom an order has been made under subsection one of this section the court may, in committing the child or young person to the Minister's guardianship order that the intellectually handicapped person be placed in the care of that person to act as the custodian of that child or young person.

(4) Where the child or young person in respect of whom an order has been made under subsection one of this section has not been placed in the care of any person pursuant to subsection three of this section the court may order that such child or young person be placed under the control of the Minister who shall arrange for his care under the provisions of section 48G of this Act.

48. (1) A child or young person ordered to be dealt with as an intellectually handicapped person shall be dealt with as an intellectually handicapped person under the provisions of this Part until he is discharged from the provisions of this Part. Effect of orders.

(2) An order that a child or young person be dealt with as an intellectually handicapped person under the provisions of this Part shall confer on the Minister to the exclusion of any other person all such powers and authority as would be exercisable by him in relation to the intellectually handicapped person if he were the father of that person and that person were under the age of fourteen

years

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years and the Minister shall continue to be such guardian until that person is discharged from the provisions of this Part.

(3) An order of the Minister under section forty-six of this Act or an order of a court under subsection one of section forty-seven of this Act that a child be dealt with as an intellectually handicapped person under the provisions of this Part shall, if the child is discharged from the provisions of this Part before he attains the age of sixteen years, be sufficient authority for the Minister, if he considers it in the interests of the child so to do, to deal with the child as a ward admitted to State control under the provisions of Part V of this Act.

(4) Where an intellectually handicapped person is discharged from the provisions of this Part any order made in respect of that person under such provisions shall cease to have force and effect.

**Duration  
of orders.**

48A. (1) An order that a child or young person be dealt with as an intellectually handicapped person under the provisions of this Part shall unless he is sooner discharged from the provisions of this Part—

- (a) remain in force until he, if a child, attains the age of eighteen years;
- (b) remain in force, if he is a young person, for a period of two years,

but may, subject to the provisions of this Part, be renewed as from the attainment of the age of eighteen years or the expiration of the period of two years, as the case may be, and thereafter from time to time for further periods of two years.

An order may be renewed notwithstanding that the intellectually handicapped person is of or over the age of twenty-one years.

(2) Within the period of two months ending with the day on which the intellectually handicapped person attains the age of eighteen years

or

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or the day on which an order or renewed order <sup>No. 27, 1967</sup> that a person be dealt with as an intellectually handicapped person under the provisions of this Part would cease under this section to operate in default of the renewal of such order or renewed order, the Minister or any officer authorised by the Minister in that behalf shall examine up to date reports concerning the person's education, developmental history, social functioning, recent psychological examination and a recent medical examination and if satisfied that the person appears still to be an intellectually handicapped person shall refer such reports to the Tribunal and request for the reasons stated that the order be renewed.

(3) Where a request is made under subsection two of this section the Tribunal—

- (a) shall give consideration to the Minister's or authorised officer's request and the reports available to the Minister or authorised officer,
- (b) may call other evidence on the matter, and
- (c) if satisfied that the person is still an intellectually handicapped person shall renew the order or renewed order for a further period of two years.

(4) Where the Tribunal is investigating a request made under subsection two of this section the intellectually handicapped person who is the subject of review need not be called before the Tribunal.

(5) If the Tribunal is not in a position to decide whether the order or renewed order should be renewed without first obtaining additional information it—

- (a) may make an interim determination renewing the order or renewed order for a further period of up to two months from the day on which

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which the order or renewed order would cease under this section to operate in default of the renewal of such order, and

(b) shall make a decision upon the renewal or otherwise of the order or renewed order before the expiration of that further period.

(6) Where the Minister or authorised officer does not request that an order or renewed order in respect of an intellectually handicapped person be renewed under this section or the Tribunal does not renew any such order or renewed order upon request under this section the intellectually handicapped person shall be discharged from the provisions of this Part.

Discharge  
of intellec-  
tually  
handicapped  
person by  
Minister or  
Tribunal.

48B. (1) An application may be made to the Minister that an intellectually handicapped person be discharged from the provisions of this Part. Any such application may be made by the intellectually handicapped person or a relative or friend of such person.

(2) The Minister on being satisfied on such evidence, including the result of a medical examination, as he may consider necessary that an intellectually handicapped person should be no longer dealt with as an intellectually handicapped person under the provisions of this Part may whether or not an application has been made under subsection one of this section at any time by order under his hand direct that the intellectually handicapped person be discharged from the provisions of this Part.

(3) Where the Minister has refused an application made pursuant to subsection one of this section the applicant may apply to the Tribunal for an order discharging the intellectually handicapped person from the provisions of this Part.

(4) Where an application is made to the Tribunal for an order discharging an intellectually handicapped person from the provisions of this Part,

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Part, the Tribunal shall thereupon inquire into the matter and proceed to hear and determine the application having regard to the matters referred to in subsection two of section forty-seven and subsection two of section eighty-nine of this Act. No. 27, 1967

(5) Where the Tribunal is conducting an inquiry into an application for an order discharging an intellectually handicapped person from the provisions of this Part, the intellectually handicapped person shall have the right to be heard and to call witnesses and the right to examine witnesses either personally or by his counsel or attorney.

(6) The Tribunal if satisfied that an intellectually handicapped person in respect of whom any such application is made should be discharged from the provisions of this Part the Tribunal may so order.

When the Tribunal does not make an order as aforesaid it may make such representations with respect to the care, protection or supervision of the intellectually handicapped person as it deems fit. The Minister may have regard to such representations when exercising his powers and authority in respect of that intellectually handicapped person.

48c. Where a justice receives information upon oath, or has reasonable cause to suspect that any person in respect of whom an order is in force under this Part is not intellectually handicapped to such a degree as to warrant his being dealt with as an intellectually handicapped person under the provisions of this Part, such justice may order that such person be brought before a court for examination at a time to be specified in such order and if upon the examination of such person and of any other witnesses it appears to the court, having regard to the matters referred to in subsection two of section forty-seven and subsection two of section eighty-nine

Discharge  
of intellec-  
tually handi-  
capped  
person by  
court.

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eighty-nine of this Act, that such person is not intellectually handicapped to such a degree as aforesaid, the court may order that person be discharged from the provisions of this Part.

Absence of  
intellec-  
tually  
handicapped  
person.

48D. (1) Where an intellectually handicapped person absents himself from the place at which he is required by the Minister or his custodian to reside without leave of the Minister or the custodian, he may be taken into custody and returned to that place or to a home or hostel by an officer or employee of the Child Welfare Department, by any constable or by any person authorised in writing by the Minister.

(2) No person shall be taken into custody under this section after being so absent for a period of six months and a person who has not returned or been taken into custody under this section within the said period shall be deemed to be discharged from the provisions of this Part.

Manage-  
ment of  
estate of  
intellec-  
tually  
handicapped  
person.

48E. Where the Minister considers it desirable that the Master in the Protective Jurisdiction of the Supreme Court should exercise the powers of management of the estate of an intellectually handicapped person, he may request the Master so to do and the Master may, where so requested, exercise such powers as though such person were a patient within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts. The provisions of Parts X and XI of the Mental Health Act, 1958, as so amended, shall apply, mutatis mutandis, to and in respect of the management of any estate in respect of which a request as aforesaid has been made.

Cost of  
maintenance  
of intellec-  
tually handi-  
capped  
person.

48F. (1) Where the Minister arranges for the care under the provisions of section 48G of this Act of any child being an intellectually handicapped person, the near relatives as defined in section fifty-eight of this Act shall be liable to pay

or

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or contribute towards such child's maintenance and a contribution order may be obtained towards the maintenance of the child under the provisions of Part XII of this Act as though such child were a ward. No. 27, 1967

(2) Where the Minister arranges for the care under the provisions of section 48G of this Act of an intellectually handicapped person not being a child, the cost to the Crown of the maintenance of that person shall constitute a debt due to the Crown and shall be recoverable accordingly from that person or his estate :

Provided that if the Minister considers that undue hardship would be occasioned by the enforcement of such debt or other circumstances so warrant he may in his discretion either forego the debt altogether or accept a smaller sum in satisfaction thereof.

48G. (1) The Minister shall be the authority Authority of  
Minister.  
to—

- (a) provide, except where an intellectually handicapped person is in the care of a custodian under the provisions of subsection three of section forty-seven of this Act or subsection five of this section, for the accommodation, maintenance, care, training, treatment, and employment of an intellectually handicapped person until such person is boarded-out, placed-out or placed as an adopted boarder ;
- (b) pay foster parents of intellectually handicapped persons such rates as may be prescribed ;
- (c) direct the removal or transfer of any intellectually handicapped person ;
- (d) board-out, place-out or place as an adopted boarder any intellectually handicapped person ;

(e)

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(e) approve of persons applying for the care of intellectually handicapped persons and of the accommodation to be made available by such persons;

(f) arrange the terms and conditions upon which persons may have the care of any intellectually handicapped person.

(2) The Minister may, under and in accordance with subsection one of this section, board-out, place-out, or place as an adopted boarder any intellectually handicapped person to the person in charge of an organisation who shall be deemed to be the foster parent of such intellectually handicapped person for the purposes of this section.

(3) The Minister may, upon such terms and conditions as may be prescribed or as he may, in any special case, approve, place an intellectually handicapped person as an adopted boarder in the care of a foster parent.

(4) The Minister may, at any time, if he considers it necessary so to do in the interests of an intellectually handicapped person—

(a) remove that person from the custody of his custodian and place that person in the custody of some other custodian who shall, subject to the concurrence of the Tribunal, thereupon be the custodian of the intellectually handicapped person, or

(b) remove that person from the custody of his custodian and if other suitable arrangements cannot be made in accordance with paragraph (a) of this subsection shall, subject to the concurrence of the Tribunal, deal with that intellectually handicapped person in accordance with other provisions of this section.

(5)



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(5) The custodian of an intellectually handicapped person shall not, without the consent of the Minister, place the intellectually handicapped person in the care of another person. No. 27, 1967

48H. (1) Notwithstanding the requirements of any other Part of this Act, and subject to subsections three and four of this section, no person shall conduct or control any premises being—

- (a) a home, or hostel or private foster home;
- (b) a day attendance centre;
- (c) an activity centre; or
- (d) a sheltered workshop,

used for the care, treatment or training apart from a relative of two or more persons who are intellectually handicapped—

- (i) except under the authority of a current license granted by the Minister; and
- (ii) unless the premises at which the home, hostel, centre or workshop, as the case may be, are conducted, are currently licensed for the purpose by the Minister.

(2) Every person who conducts or controls a home, hostel, private foster home, day attendance centre, activity centre or sheltered workshop in contravention of subsection one of this section shall be guilty of an offence against this Act and liable to a penalty not exceeding fifty dollars and to a further penalty not exceeding ten dollars for every day after conviction during which the offence continues.

(3) The Minister may exempt particular premises from the operation of subsection one of this section.

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(4) The provisions of this section shall not apply to or in respect of premises being—

- (a) premises of a like nature to those referred to in subsection one of this section that are conducted in accordance with a license, registration, or certificate granted under the provisions of any other Act; or
- (b) premises that are controlled by the State.

Application  
for  
licenses.

48I. (1) An application for a license under this Part shall be made in the prescribed form and shall be dealt with as though it were an application made under Part VII of this Act.

(2) The provisions of Part VII of this Act (sections thirty-three and thirty-four excepted) together with regulations relevant to such provisions shall apply mutatis mutandis to premises referred to in section 48H of this Act as though such premises were child care centres, children's depots, homes or hostels or private foster homes under that Part and as though "child" used in that Part were construed as "a person who is intellectually handicapped."

Removal of  
child or  
young  
person from  
unlicensed  
premises.

48J. Any child or young person who is intellectually handicapped and who is an inmate of or is in attendance at a home, hostel or private foster home, a day attendance centre, an activity centre or a sheltered workshop in respect of which there is no current license or which is conducted or controlled by a person who is not licensed to conduct or control that home, hostel, centre or workshop, as the case may be, shall, if the whereabouts of the parents or guardian of the child or young person are known, be forthwith removed therefrom by, or by some person on behalf of, his parents or guardian on the request of an officer and if not so removed, or if the whereabouts of his parent or guardian are unknown,

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unknown, shall be deemed to be a neglected child or young person within the meaning of this Act and may be dealt with in accordance with the provisions of Part XIV of this Act. No. 27, 1967

48K. The provisions of sections one hundred and twenty-five, one hundred and twenty-nine, one hundred and thirty-four, one hundred and forty-four, one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, one hundred and fifty, and one hundred and sixty-one of this Act applicable to a child or young person or ward or inmate shall apply, mutatis mutandis, to and in respect of an intellectually handicapped person. Provisions of Act applicable to intellectually handicapped person.

48L. (1) The Minister may by order under his hand delegate to any specified officer of the Child Welfare Department all or any of the powers, authorities, duties and functions conferred or imposed on him by or under this Part or the regulations except this power of delegation. Delegation of powers.

(2) Where any such power, authority, duty or function is so delegated and its exercise or performance depends upon the opinion, belief or state of mind of the Minister, that power, authority, duty or function may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate.

(3) No person shall be concerned to see or inquire whether any act, matter or thing done or performed by any officer of the Child Welfare Department when purporting to act as a delegate of the Minister is or is not authorised by the delegation.

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Regulations.

48M. Regulations may be made under Part XVIII of this Act for and with respect to—

- (a) the conditions and requirements of licenses under this Part and the form of such licenses;
- (b) the minimum standards to be observed and facilities to be provided to ensure the health, comfort, safety and proper care of persons received in premises licensed under this Part;
- (c) the records, forms or registers to be completed and maintained in respect of persons received in or discharged from such licensed premises;
- (d) the conditions or requirements in respect of the qualifications and experience subject to which a licensee may employ persons caring for persons in such licensed premises or otherwise employed therein.