

New Zealand.



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1927, No. 61.

Title.

AN ACT to amend the Child Welfare Act, 1925.

[30th November, 1927.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Child Welfare Amendment Act, 1927, and shall be read together with and deemed part of the Child Welfare Act, 1925 (hereinafter referred to as the principal Act).

PART I.

CHILDREN'S HOMES.

Registration.

Interpretation.

2. In this Part of this Act—

“Children’s home” includes any of the private institutions mentioned in the First Schedule to the principal Act, and also includes every orphanage, children’s home, or other like institution (not being a foster-home within the meaning of Part V of the Infants Act, 1908) where children are maintained apart from their parents or guardians, whether for payment or not, but does not include any institution conducted wholly for educational purposes:

“Controlling authority” with respect to a children’s home means any person or persons, society, or body corporate having control of the administration of the home:

“Manager” with respect to a children’s home means the person appointed by the controlling authority as the manager for the purposes of this Act.

Manager of children’s home to be appointed by controlling authority.

3. (1) For every children’s home registered under this Act as hereinafter provided there shall be a manager, to be appointed by the controlling authority.

(2) Notice in writing of the appointment of any person as the manager of a children’s home shall be forthwith given by the controlling authority to the Minister.

Repeal.

(3) Section ten of the principal Act is hereby amended by repealing subsection three thereof.

Registration of existing children’s homes.

4. (1) The controlling authority or the manager of every children’s home in existence at the time of the passing of this Act shall within three months thereafter make application to the Minister for the registration of that home under this Part of this Act.

(2) Every such application shall be in the prescribed form, and shall contain such information as may be required with respect to the premises to which the application relates, the equipment and staffing of the home, and the children maintained therein.

(3) If within the time aforesaid, or within such extended time as the Minister may allow, any such children’s home is not registered as such under this Act it shall be unlawful, as from the expiration of the said period, to continue to maintain the institution as a children’s home,

and the manager and every member of the controlling authority shall be deemed to commit an offence against this Act on every day on which any children are maintained in the institution contrary to the provisions of this section.

(4) No proceedings for an offence against this section shall be instituted save pursuant to the written directions of the Minister.

5. (1) No children's home established after the passing of this Act shall be used as such unless it is registered as a children's home under this Part of this Act.

Registration of children's homes that may be hereafter established.

(2) Application for registration shall be made to the Minister in writing in the prescribed form by the manager or by the controlling authority, and shall contain such information as may be required with respect to the premises to which the application relates, the equipment and staffing thereof, and the number and classes of children whom it is intended to maintain therein.

(3) The manager and every member of the controlling authority of any children's home established after the passing of this Act and not registered as herein provided shall be deemed to commit an offence against this Act on every day on which any children are maintained in the home contrary to the provisions of this section.

(4) No proceedings for an offence against this section shall be instituted save pursuant to the written directions of the Minister.

6. (1) On receipt of an application for the registration of any premises as a children's home the Minister shall cause the same to be inspected by the Superintendent or by some other officer of the Child Welfare Branch, and if on the report of such officer the Minister is satisfied that the premises are suitable for a children's home, and that suitable provision has been made for the staffing and equipment thereof and generally for the welfare of the children maintained or proposed to be maintained therein, he shall cause the home to be registered as a children's home under this Part of this Act.

Procedure after receipt of application for registration of children's home.

(2) The Minister shall not refuse to register any premises as a children's home under this section except with the concurrence of the Governor-General in Council.

7. (1) Where the controlling authority of any registered children's home proposes to erect any new buildings for the purposes of such home, or to make any substantial structural alterations of existing buildings, it shall be the duty of the controlling authority, before proceeding to carry out such works, to submit plans of the same to the Minister for his approval. For the purposes of this subsection any structural alterations estimated to cost not more than two hundred pounds shall not be deemed to be substantial alterations.

Plans of proposed new buildings to be submitted to Minister.

(2) Where any person or persons, society, or body corporate proposes to erect any buildings with intention to establish a children's home it shall be the duty of such person or persons, society, or body corporate, as the case may be, before proceeding with the erection of any such building, to submit plans of the same to the Minister for his approval, and if such approval is not obtained before any such building is erected the Minister may, with the concurrence of the Governor-General in Council, refuse to register it as a children's home under this Part of this Act until any defects in the plan of the building have been remedied to his satisfaction.

Cancellation of Registration.

Minister may require structural alterations of children's home.

8. If on the report of the Superintendent the Minister is satisfied that for the safety or otherwise in the interests of the children maintained in any children's home any alterations or improvements are required in any of the buildings used for the purposes of the home he may, by writing under his hand directed to the manager, require the controlling authority of the home to effect such alterations, repairs, improvements, or additions as may be specified in the requisition, within a time to be therein specified.

In default of compliance with requisition for structural alterations Minister may cancel registration.

9. If within the time specified in any requisition under the last preceding section, or within such extended time as the Minister may allow, the requisition is not complied with to the satisfaction of the Minister he may, with the concurrence of the Governor-General in Council, after giving to the manager sixty days' notice in writing of his intention so to do, cancel the registration of the children's home, and it shall not thereafter be lawful to use the premises as a children's home.

Further provisions as to cancellation of registration of children's home.

10. If at any time it appears to the Minister for any other reason that satisfactory provision is not being made for the welfare of any children maintained in a children's home, or that the conduct of the home is in any way unsatisfactory, he may, with the concurrence of the Governor-General in Council, after giving to the manager sixty days' notice in writing of his intention so to do, cancel the registration of the children's home, and it shall not thereafter be lawful to use the premises as a children's home.

Inspection.

Inspection of children's homes.

11. (1) The Superintendent, or any permanent officer of the Child Welfare Branch authorized in that behalf by the Minister, may at any reasonable time enter any children's home and may inspect any part thereof in use by the children maintained therein; and may examine the state and condition of such children, or any of them.

(2) On the request in writing of the manager or controlling authority of any children's home inspected pursuant to this section the manager or controlling authority aforesaid shall be entitled to be informed by the Minister of the contents of any report made to him by the Superintendent or other officer in consequence of such inspection.

Records.

Manager to keep records as to inmates.

12. (1) It shall be the duty of the manager of every children's home to keep, in respect of every child or other inmate maintained therein or otherwise under the care or control of the manager or of the controlling authority, a record showing the following particulars, namely:—

(a) The names of the parents of the inmate:

(b) Its age and sex, and the date of its admission to the home:

(c) The name of the person on whose application the inmate was admitted to the home, and the relationship of that person to the inmate:

(d) The reason of the inmate's admission to the home.

(2) The manager of every children's home shall once at least in each year, as required by the Superintendent, forward to the Superintendent

a schedule with particulars as to the number of inmates of each sex, and the ages of such inmates maintained in, or admitted to, or discharged from the institution during the preceding year.

Maintenance and Custody of Children.

13. (1) The manager of any children's home, acting on behalf of the controlling authority, may, on application in that behalf made by either parent of any child or by its guardian, or by any person for the time being having the custody or control of the child, assume control of that child for such period and on such terms as to cost of maintenance and otherwise as may be agreed on by the parties.

Manager of children's home may agree with parent or other person having control of child to receive such child and maintain him in the home.

(2) In respect of any child to whom any agreement under this section relates the manager shall so long as the child is under his control (whether he is for the time being in the children's home or elsewhere) have the same powers and responsibilities in all respects as the Superintendent would have if the child had been committed to the care of the Superintendent in accordance with the provisions of the principal Act, save that the guardianship of the child shall not by virtue of such agreement be deemed to be vested in the manager.

(3) If during the currency of any agreement under this section the parent or guardian of any child, or any other person, contrary to the terms of the agreement, attempts by any means to obtain possession of the child the manager may apply to the nearest Children's Court for an order for the enforcement of the agreement, and thereupon the Court may make an order confirming the agreement, or may make such other order as it thinks proper having regard to the welfare of the child.

(4) On the expiry of an agreement under this section, or at any time before such expiry, a Stipendiary Magistrate, if he is satisfied that such agreement will not be extended or that a new agreement with respect to the maintenance of the child in the children's home will not be entered into, may, on complaint by the manager or any other person that in the interests of the child he should not be under the control of his parents or of either of his parents, or of any other person specified in the complaint, make an order committing the child to the care of the Superintendent, to be dealt with as provided in the principal Act.

14. Where any agreement with respect to the cost of maintenance of any child in a registered children's home has been made, whether before or after the passing of this Act, between the controlling authority of the home or the manager or some other person on behalf of the controlling authority of the one part, and either parent of the child or its guardian or any other person of the other part, the manager may cause a certified copy of the agreement to be registered in the prescribed manner in the office of a Magistrate's Court, and thereupon the agreement shall be of the same force and effect and all proceedings may be taken thereon in the same manner as if it were and at all times since the execution thereof had been a maintenance order made by a Magistrate acting under the authority of the Destitute Persons Act, 1910.

Agreements for maintenance of children in registered children's home may be enforced as maintenance orders under the Destitute Persons Act.

Reg P 2278. Vol II, 1928

Regulations.

15. The power conferred on the Governor-General by section forty-five of the principal Act to make regulations is hereby extended

Additional power to make regulations.

to include power to make regulations for all or any of the following purposes :—

- (a) Prescribing forms of application for the registration of any premises as a children's home under this Part of this Act, and the particulars to be contained therein :
- (b) Providing for the issue of certificates of registration :
- (c) Providing for the registration of agreements relating to the cost of maintenance of any children in a children's home :
- (d) Prescribing penalties, not exceeding in any case a fine of twenty pounds, for offences against this Part of this Act or any regulations for which no penalty is otherwise provided.

PART II.

CHILDREN'S COURTS.

Every Magistrate appointed to exercise jurisdiction in a Children's Court may exercise jurisdiction in any such Court.

16. Every Stipendiary Magistrate appointed pursuant to section twenty-seven of the principal Act to exercise jurisdiction in a specified Children's Court, whether such appointment has been made before or after the passing of this Act, shall, while such appointment continues in force, be competent without further appointment to exercise jurisdiction in any Children's Court established under the said Act.

Informations charging children with trivial offences may be discharged by Magistrate without being heard in Court.

17. At any time after an information has been laid charging a child with an offence a Stipendiary Magistrate competent to exercise jurisdiction in the Children's Court in which such information would in ordinary course be heard may require a Child Welfare Officer to furnish a report on the subject-matter of the information, and if after considering such report the Magistrate is of opinion that the matter is trivial he may discharge the information, and thereupon the information shall be deemed never to have been laid.

Children's Court to be kept distinct from other Courts.

18. (1) So far as practicable persons attending any sittings of a Children's Court shall not be brought into contact with persons in attendance at any other Court ; and for this purpose the sittings of the Children's Court shall not, except in cases where no other suitable room is available, be held in any room in which any other Court ordinarily exercises jurisdiction ; nor shall a sitting of the Children's Court, if held in the same premises as any other Court, be held at a time when such other Court is sitting, if other arrangements can reasonably be made.

Repeal.

(2) This section is in substitution for section twenty-eight of the principal Act, and that section is hereby accordingly repealed.

Declaratory provisions as to extent of jurisdiction of Children's Courts.

19. Whereas by section twenty-nine of the principal Act provision is made to the effect that all judicial proceedings within the jurisdiction of a Stipendiary Magistrate or of Justices relating primarily to any child or children and involving the attendance of children at any Court shall be heard and determined by a Stipendiary Magistrate or a Justice or Justices sitting in a Children's Court : And whereas doubts have been expressed as to the true intent and purpose of this provision and it is desired to remove the same, and also to define the extended

powers conferred on the Children's Court by section thirty-one of the said Act: Be it therefore enacted as follows:—

(1) In any judicial proceedings in a Children's Court the Stipendiary Magistrate or Justices exercising jurisdiction therein shall in relation to those proceedings have all the powers that would be exercisable by them if a Children's Court had not been established and they were sitting elsewhere than in a Children's Court.

(2) For the purpose of determining the extent of the jurisdiction of any Children's Court or of any Stipendiary Magistrate or Justices sitting in a Children's Court it is hereby declared as follows:—

(a) All matters lawfully before a Stipendiary Magistrate or Justices are and at all times since the commencement of the principal Act have been matters within their jurisdiction within the meaning of section twenty-nine of the principal Act.

(b) Where any such matter is an indictable offence not triable summarily (that is to say, a matter in respect of which the duty of the Stipendiary Magistrate or Justices, in the absence of special authority conferred by the principal Act or some other Act, would be to commit the accused for trial or sentence, or to dismiss the information) the matter may be finally dealt with by the Children's Court acting under the powers conferred on it by section thirty-one of the principal Act.

(c) If in any case the Court does not with respect to any child exercise in whole or in part the special authority conferred on it by section thirty-one of the principal Act it shall deal with the child in all respects as if the powers conferred by the said section had not been so conferred.

(d) The decision of a Children's Court to dismiss an information against a child or to commit a child to the Supreme Court for trial or sentence shall, without limiting the meaning of the word "determine" or "determination" as used in the principal Act, be deemed to be a determination of proceedings for the purposes of that Act; and no matter shall be deemed to be excluded from the jurisdiction of the Children's Court by reason merely of the fact that, in the absence of the special authority conferred by the principal Act, a Stipendiary Magistrate could not finally determine the matter otherwise than by dismissal.

20. (1) In any case where an information is laid charging a child with any offence jointly with any other person or persons the following provisions of this section shall apply if one or more of the persons jointly charged is not a child within the meaning of the principal Act.

(2) In any such case as aforesaid the information shall be submitted for the consideration of a Magistrate competent to exercise jurisdiction in a Children's Court, and the Magistrate shall direct that the proceedings be heard in the Children's Court or elsewhere as in his discretion he thinks fit.

(3) Where any such proceedings are directed to be heard in a Children's Court as aforesaid the Magistrate or Justices exercising jurisdiction therein may at any stage of the proceedings make an order

Special provisions applicable in cases of joint charges where one of the persons charged is a child.

for their removal out of the Children's Court, and thereupon such proceedings shall be held as if a Children's Court had not been established.

(4) In any proceedings to which this section applies, the powers of any Magistrate or Justices in respect of any accused person not being a child shall be limited to such powers as are exercisable by the said Magistrate or Justices elsewhere than in a Children's Court.

21. (1) In any proceedings in which a person is charged before a Stipendiary Magistrate or Justices with the commission of an offence against a child the proceedings may be heard in a Children's Court, but the Magistrate or Justices may, if in their opinion the matter would be more properly dealt with elsewhere, hear and determine it in the same manner as if a Children's Court had not been established, notwithstanding that the proceedings may involve the attendance at Court of any child or children.

(2) Section twenty-nine of the principal Act is hereby consequentially amended by omitting the words "or against" after the words "offences committed by."

22. Notwithstanding anything to the contrary in section twenty-nine of the principal Act, no proceedings relating to a charge of murder or manslaughter brought against a child or any other person shall be heard in a Children's Court, but all such proceedings shall be taken and heard as if a Children's Court had not been established.

23. Section thirty-one of the principal Act is hereby amended by omitting the words "but the Court," and substituting the following words: "Whether or not in any such case the Court determines the charge it."

24. (1) The powers to make regulations conferred on the Governor-General in Council by section forty-five of the principal Act shall include power to make rules for regulating the practice and procedure of Children's Courts in all matters within the jurisdiction of such Courts.

(2) In the absence of such rules, or in so far as they do not extend, the presiding Magistrate or Justices may determine the procedure to be adopted with respect to any matter, and in so doing it shall not be necessary to conform to any rules that would be applicable in the proceedings if taken elsewhere than in a Children's Court. Without limiting the generality of the foregoing provisions of this subsection it shall not be necessary in any proceedings in a Children's Court to record a conviction against a child even though the charge may be proved, and the Court may, without recording a conviction, impose any penalty or make any order that could have been imposed or made if a conviction had been recorded.

Jurisdiction of the Supreme Court.

25. Where a child charged with any offence is committed to the Supreme Court for trial or sentence the Judge of the Supreme Court may, in his discretion, refer the case to a Children's Court to be dealt with in the manner provided by section thirty-one of the principal Act, or the Judge may, in his discretion, at any stage of the proceedings in the Supreme Court make any order in relation to the child that could have been made by the Children's Court acting under the powers conferred on it by section thirty-one of the principal Act.

Proceedings for offences against children may be taken in Children's Court or elsewhere.

Section 29 of principal Act amended.

No proceedings relating to a charge of murder or manslaughter to be heard in a Children's Court.

Section 31 of principal Act amended.

Procedure in Children's Courts.

Supreme Court may refer case back to Children's Court.

26. Section thirty-two of the principal Act is hereby amended by adding the following subsections:—

Section 32 of principal Act extended.

“(2) In lieu of referring to a Children’s Court, as hereinbefore in this section provided, any case in which a young person is charged with an offence the Supreme Court or any inferior Court as aforesaid may make in relation to such young person any order that could be made by a Children’s Court if the case were referred to such Court.

“(3) For the purposes of this section the expression ‘person charged with an offence’ shall include a person committed to the Supreme Court for sentence on a plea of guilty.”

PART III.

MISCELLANEOUS AMENDMENTS OF PRINCIPAL ACT.

27. (1) Section two of the principal Act is hereby amended by omitting from the definition of the term “child” the word “sixteen,” and substituting the word “seventeen.”

For purposes of principal Act the term “child” extended to include persons under seventeen years of age.

(2) The principal Act is hereby consequentially amended by omitting the word “sixteen” wherever it occurs in section thirty-two, and in each case substituting the word “seventeen.”

28. (1) Where pursuant to the provisions of subsection four of section thirteen of the principal Act an order is made placing a child under the supervision of a specified Child Welfare Officer the Superintendent may direct or authorize any other Child Welfare Officer to exercise supervision over the said child in any of the following cases, namely:—

Order for committal of child to care of specified Child Welfare Officer may be varied.

(a) Where the Child Welfare Officer specified in the order ceases to hold office as a Child Welfare Officer or is removed to another place, or where in the course of administration any change is made in the nature or scope of his duties:

(b) Where the place of residence of the child is changed, or where by reason of the age or sex of the child the Superintendent is of opinion that such child should be placed under the supervision of some other Child Welfare Officer.

(2) Subsection four of the said section thirteen is hereby amended by inserting, after the words “a Child Welfare Officer to be named in that behalf,” the words “or to be specified by reference to his office.”

(3) Where by an order made under section thirteen of the principal Act a child is placed under the supervision of a Child Welfare Officer specified by reference to his office and not by name the child shall, without further direction, be deemed to have been placed under the supervision of any other Child Welfare Officer who may for the time being be carrying out the duties of that office.

(4) This section shall apply with respect to orders made under the said section thirteen, whether made before or after the passing of this Act.

29. Section thirteen of the principal Act is hereby further amended by inserting, after subsection six, the following subsection:—

Duty of parent or guardian to assist Superintendent or Child Welfare Officer.

“(6A) A certified copy of every order made under this section shall be served on the parent or guardian or other person appearing

to have control of the child to whom the order relates, and it shall be the duty of such person to give all reasonable assistance to the Superintendent or the Child Welfare Officer, as the case may be, to enforce the provisions of the order or to give full effect thereto."

Failure on part of child to observe conditions imposed by Child Welfare Officer under whose supervision he may be.

30. If any child who has been placed under the supervision of a Child Welfare Officer fails to observe or comply with any instructions of the said Child Welfare Officer or any conditions imposed on him by the Child Welfare Officer, or if the Child Welfare Officer is not satisfied with the conduct of the child or with the conditions under which he is living, he may, without further authority than this section, cause such child to be brought before a Children's Court there to be dealt with as if a complaint had been made under section thirteen of the principal Act.

Children's Court to obtain and consider report of Child Welfare Officer.

31. (1) No judicial proceedings shall be heard or determined in any Children's Court unless and until a Child Welfare Officer has had an opportunity to investigate the circumstances of the case and to report thereon to the Court.

(2) It shall be the duty of every constable who lays any information in respect of an offence alleged to have been committed by a child, or who makes any complaint or application in relation to any child, whether under the principal Act or any other Act, forthwith to advise a Child Welfare Officer of the subject-matter of the information, complaint, or application.

(3) It shall be the duty of the Clerk of the Children's Court to which any proceedings have been removed from any other Court forthwith to advise a Child Welfare Officer of the subject-matter of the proceedings, and of the time when and the place where the matter will be dealt with by the Court.

(4) A certified copy of every order made by a Children's Court shall be forthwith forwarded by the Clerk of that Court to the Superintendent.

(5) Where any child or young person is by the order of any Court other than a Children's Court committed to the care of the Superintendent or placed under the supervision of a Child Welfare Officer a certified copy of the order shall be forthwith forwarded by the Registrar or Clerk, as the case may be, to the Superintendent.

Repeals.

(6) Subsections seven and eight of section thirteen of the principal Act are hereby repealed.

Status of persons over twenty-one years of age in respect of whom a period of control under the principal Act has been extended.

32. Section twenty-two of the principal Act is hereby amended by inserting, after the words "this Act" in subsection five, the words "and all other provisions of the law relating specially to the status or capacity of minors."

Offence by parent or guardian of child who obstructs or fails to assist Child Welfare Officer in carrying out order of Court.

33. Section twenty-four of the principal Act is hereby amended by adding to subsection one the following: "or

"(f) Obstructs the Superintendent or any Child Welfare Officer in obtaining possession of any child committed to the care of the Superintendent or otherwise in the carrying-out of any order under this Act; or who, being the parent or guardian of any child to whom an order under this Act relates, or being any other person having or appearing to have for the time being the custody or control of any such child, fails to give reasonable assistance towards carrying

out the order, or fails to take all proper steps to ensure compliance by the child with any directions, instructions, or conditions given or imposed by a Child Welfare Officer in the course of his duty as such."

34. Section twenty-four of the principal Act is hereby further amended as follows:—

Section 24 of principal Act further amended.

(a) By adding to paragraph (b) of subsection one the words "(being an officer, servant, or other person employed in or about an institution under this Act) permits or connives at the escape of any inmate; or":

(b) By inserting, after the words "Without lawful authority or excuse" in paragraph (e), the words "or knowingly in contravention of the wishes of the Superintendent or any Child Welfare Officer":

(c) By omitting from paragraph (b) of subsection two the words "that person," and substituting the words "any person in whose charge a female inmate has been placed"; and by inserting, after the words "to have" in the same paragraph, the words "or attempt to have."

35. (1) Section thirty-six of the principal Act is hereby amended by adding to subsection two the following words: "Notwithstanding anything to the contrary in the last-mentioned Act, a maintenance order made in respect of an inmate may be limited to the past maintenance of that inmate by an institution, and such an order may be made notwithstanding that at the time of the making of the order or of the complaint the person in respect of whose maintenance the same is made may be dead or have otherwise ceased to be an inmate."

Maintenance order in respect of inmate may be limited to past maintenance to exclusion of future maintenance.

(2) The said section is hereby further amended by inserting, after the words "the duty of the Superintendent" in subsection three, the words "(but not to the exclusion of any other competent person)."

36. The Superintendent may, after exhaustive inquiries, at the request in writing of the mother of any illegitimate child, initiate proceedings under section eight of the Destitute Persons Act, 1910, with a view to the making of an affiliation order against any person alleged to be the father of such child.

Superintendent may initiate affiliation proceedings.

37. The Minister of Education may, with the concurrence of an Education Board, appoint any Child Welfare Officer to be an Attendance Officer within the district of that Board, and any Child Welfare Officer so appointed shall have the same powers as if he had been appointed an Attendance Officer by the Education Board pursuant to section sixty-four of the Education Act, 1914.

Child Welfare Officers may be appointed Attendance Officers for purposes of Education Act.