

Queensland



ANNO VICESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 72 of 1971

**An Act to Amend the Children's Services Act 1965-1970
in certain particulars**

[ASSENTED TO 20TH DECEMBER, 1971]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Children's Services Act Amendment Act 1971*.

(2) The *Children's Services Act 1965-1970* is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Children's Services Act 1965-1971*.

2. New s. 24A. The Principal Act is amended by inserting after section 24 the following section:—

“24A. Child who is mentally ill. (1) Where, pursuant to the provisions of *The Mental Health Acts 1962 to 1964*—

- (a) an application required by those Acts to be made to a Stipendiary Magistrate is to be made in respect of a child it may be made to a Magistrate of Children's Courts who may, in relation thereto, exercise all or any of the powers and authorities conferred by those Acts on a Stipendiary Magistrate;
- (b) a power or authority may be exercised by a Stipendiary Magistrate without application made in that behalf, a Magistrate of Children's Courts may exercise that power or authority, as prescribed by those Acts, in relation to a child.

(2) For the purposes of this section—

- (a) a reference in *The Mental Health Acts 1962 to 1964* to Stipendiary Magistrate includes reference to Magistrate of Children's Courts;
- (b) the expression “punishable on summary conviction” when used in those Acts shall be read as “punishable on summary conviction before a Magistrates Court”;
- (c) any form prescribed for the purposes of those Acts may be adapted as the case requires.”

3. Amendment of s. 27. Section 27 of the Principal Act is amended by inserting after the words “another person conjointly” the words “, whether the proceeding is instituted under this Act or otherwise,”.

4. Amendment of s. 28. Section 28 of the Principal Act is amended by—

(a) in subsection (1), omitting the words “a Children's Court,” and inserting in their stead the words “any court,”;

(b) omitting subsection (2) and inserting in its stead the following subsection:—

“(2) Certain persons to be dealt with as children. Where any proceeding is commenced in relation to a child before any court or before a justice and the person in relation to whom the proceeding was commenced ceases to be a child before the proceeding is completed it shall be lawful to complete the proceeding as if he had continued to be a child and, in that event, he may be dealt with by the court or justice having cognizance of the proceeding on the basis that he is a child.

Where a defendant concerning whom the taking of an examination of witnesses in relation to an indictable offence charged against him is commenced while he is a child has ceased to be a child at the time he stands before a court of competent jurisdiction to be sentenced or otherwise dealt with according to law in respect of that offence or of any other offence arising

out of the same circumstances the court may, if it thinks fit, sentence or otherwise deal with him on the basis that he is a child.”.

5. Amendment of s. 29. Section 29 of the Principal Act is amended by—

(a) in subsection (1), omitting subparagraph (b) and inserting in its stead the following subparagraph:—

“(b) was a child when there was commenced against him, whether before that Children’s Court or before any other court or tribunal, a proceeding whereby or as a result whereof he stands before that Children’s Court charged with an indictable offence other than such an offence for which he would be liable, were he not a child, to imprisonment with hard labour for life.”;

(b) in subsection (5), omitting the words “ “*The Justices Acts, 1886 to 1964,*” ” and inserting in their stead the words “ *The Justices Acts 1886 to 1968* or of this Act.”.

6. New s. 29A. The Principal Act is amended by inserting after section 29 the following section:—

“**29A. Committal of offenders to care of Director.** In addition to all powers conferred by *The Justices Acts 1886 to 1968* or by *The Criminal Code* with a view to securing the appearance of a defendant before any court, a justice who or a court that commits a defendant who is a child or who may be dealt with as a child to be tried or for sentence before a court of competent jurisdiction or that adjourns the trial of such a defendant to a court of competent jurisdiction may, by his or its warrant, commit the defendant to the custody of the Director to be safely kept by him in such place as he considers suitable until the sittings of the court of competent jurisdiction or until the defendant is sooner delivered or admitted to bail by due process of law.”.

7. Amendment of s. 44. Section 44 of the Principal Act is amended by adding the following subsections:—

“(3) Where assistance is being or has been given under this Part to a family and it appears to the Director that a person who should care for the family is in such circumstances that he may reasonably be expected to contribute to the cost of such assistance and that it is just that he should be called upon to so contribute, the Director, upon proof to the court that it is just that the defendant be called upon to so contribute, may recover from him by proceedings in a court of competent jurisdiction, as for a debt due and owing by him to the Director and unpaid, the amount that, as at the date the order of the court is pronounced, has been paid by way of the assistance for which he is (by this subsection and the following subsection) made liable or, as the case may require, the value of such assistance given as at that date, or any part of that amount or value.

In a proceeding for the recovery of money under this subsection, a certificate purporting to be by the Director that it appears to him that the matters specified in the preceding paragraph as a condition precedent to his right of recovery are established shall be conclusive evidence of the existence of the condition precedent.

(4) For the purposes of subsection (3) of this section a person who should care for the family in question—

(a) in respect of assistance given in relation to the mother of the family, is her husband at the time the assistance is given, or any person who, within six months prior to the time the giving of assistance is commenced, had lived in a connubial relationship with her;

(b) in respect of assistance given in relation to a child of the family or other person in relation to whom assistance may be given under this Part were he a child, is the mother or father of the child or other person, or is a person who, at the time the assistance is given, is a step-parent of the child or other person, or a person who, within six months prior to the time the giving of assistance is commenced, had lived in a connubial relationship with the mother or father of the child or other person.

(5) Where pursuant to subsections (3) and (4) of this section two or more persons are liable in respect of the same assistance given, those persons shall be jointly and severally so liable.”.

8. Amendment of s. 46. Section 46 of the Principal Act is amended by, in subsection (1), omitting paragraph (h) and inserting in its stead the following paragraph:—

“(h) he carries on street trading that is not authorized by section 113 of this Act.”.

9. Amendment of s. 62. Section 62 of the Principal Act is amended by—

(a) omitting subsection (1) and inserting in its stead the following subsection:—

“(1) When a child has pleaded guilty or has been found guilty of an offence before a court of competent jurisdiction the court—

(a) may order such investigations and medical examinations to be made of and in relation to the child as the court thinks necessary or desirable and that reports thereon be furnished to the court;

(b) may remand the child in the custody of his parent or guardian, the Director or other person who can properly care for him or, if the court is satisfied that the child is so unruly or that his character is otherwise such that he should be detained elsewhere than in that custody, in such other custody as the court thinks fit until all investigations and examinations ordered by the court to be made are completed;

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- (c) may order the child or his parent or guardian (other than the Director), or any two or more of them, to pay compensation or make restitution in respect of damage or loss occasioned by the offence, or order the child to reinstate property damaged or defaced in the course of the offence;
 - (d) may order the child or his parent or guardian (other than the Director), or any two or more of them to pay the costs of the proceedings before the court and of any investigation or examination made of or in relation to the child pursuant to the court's order, save where the making of an order as to costs would, apart from this provision, be unlawful;
 - (e) may impose a fine upon the child as provided for or permitted in the Act under which he is charged;
 - (f) may order a parent or guardian (other than the Director) of the child to enter into a recognizance in such amount as the court fixes without a surety or with such surety or sureties as the court orders, and for such period as the court orders, conditioned that such parent or guardian exercise proper care, control, protection and guardianship in respect of the child;
 - (g) may order that the child be committed to the care and control of the Director for a period not exceeding two years;
 - (h) may order that the Director exercise supervision over and in relation to the child until he attains the age of eighteen years or for a period not exceeding two years notwithstanding that within that period the child will have attained the age of eighteen years;
 - (i) may order the child to be imprisoned for a period not exceeding two years if the court is satisfied that the child is so unruly or his character is otherwise such that he should be detained in custody other than in a home or institution under the control of the Director;
 - (j) may, if the offence is of a sexual nature committed upon or in relation to a child, make such orders in relation to and deal with the child pursuant to *The Criminal Law Amendment Act of 1945* as if he were not a child and, where the court is a Children's Court, as if the court were a Magistrates Court;
 - (k) may—
 - (i) admonish and discharge the child; or
 - (ii) order that the Director exercise supervision over and in relation to the child for a period not exceeding two years; or
 - (iii) order that the child be committed to the care and control of the Director for a period not exceeding two years.

A court may exercise any one or more of the powers conferred on it by paragraphs (a) to (k) of this subsection as it thinks appropriate to the circumstances of the case but in respect of a particular offender shall not exercise more than one of the powers conferred on it by paragraph (k) of this subsection.

A court may exercise a power conferred on it by paragraph (a), (b), (c), (d) or (f) of this subsection without formally convicting the defendant of the material offence and shall not formally convict the defendant of the material offence if it exercises a power conferred on it by paragraph (k) of this subsection, and if, in the result, the defendant is not formally convicted of that offence a conviction shall not be recorded against the defendant in respect of that offence.

Save as is provided in this Act a child who has been convicted of an offence shall not be sentenced to imprisonment.”.

10. Repeal of and new s. 67. The Principal Act is amended by repealing section 67 and inserting in its stead the following section:—

“ 67. Effect of supervision order. (1) When it is ordered under this Act that the Director or the Chief Probation Officer exercise supervision over and in relation to any person—

- (a) matters and objects in relation to which the supervision is to be exercised may be specified in the order and such matters and objects shall be taken to be objects of the order for the purpose of section 68 of this Act;
- (b) where the order is made under section 62 of this Act the court that makes it may therein order the child to whom it relates—
 - (i) to do such things as the child may be ordered to do under paragraph (c) or (d) of subsection (1) of that section;
 - (ii) to attend during the period of supervision such attendance centres maintained for the purposes of this Act as the Director orders;
 - (iii) to fulfil during the period of supervision such conditions as the court thinks fit to impose, and the matters and things so ordered to be done shall be taken to be objects of the order for supervision for the purpose of section 68 of this Act;
- (c) the Director or, as the case may be, the Chief Probation Officer may order the person over and in relation to whom the supervision is exercised, a parent or guardian of that person, a person in whose custody that person is, or any two or more of such persons to do or refrain from doing any act or thing (including attending attendance centres maintained for the purposes of this Act, whether or not a court has so ordered) that, in the opinion of the Director or, as the case may be,

Chief Probation Officer, pertains to a matter or object specified in the order or, in so far as not so specified, is in the best interests of the person over and in relation to whom the supervision is exercised.

(2) An order made under paragraph (c) of the preceding subsection shall be in writing signed by the Director, or a person authorized by him in that behalf, or, as the case may be, the Chief Probation Officer, or a person authorized by him in that behalf.

(3) A person who contravenes or fails to comply with an order made under paragraph (c) of subsection (1) of this section commits an offence against this Act.”.

11. Amendment of s. 68. Section 68 of the Principal Act is amended by omitting the words “ paragraph (b) ” where they twice occur and inserting in their stead in each case the words “ paragraph (c) ”.

12. Amendment of s. 69. Section 69 of the Principal Act is amended by—

(a) inserting after subsection (1) the following subsections:—

“ (1A) A person having a child in his charge shall not leave the child for a time that is unreasonable having regard to all the circumstances of the case unless he makes reasonable provision for the supervision and care of the child during that time.

Penalty: Two hundred dollars or imprisonment for three months or both such fine and imprisonment.

(1B) Proceedings in respect of a contravention of subsection (1A) of this section shall not be brought against a person who is under the age of seventeen years, not being the parent or guardian of the child concerned.”;

(b) in subsection (2), omitting the words “ the preceding subsection ” wherever they occur and inserting in their stead in each case the words “ subsection (1) or (1A) of this section ”;

(c) in subsection (7), inserting after the words “ subsection (1) ” the words “ or (1A) ”.

13. Amendment of s. 86. The Principal Act is amended by repealing section 86 and inserting in its stead the following section:—

“ **86. Control of day care centres.** (1) Regulations made under section 152 of this Act in respect of day care centres may provide for the control of such centres by way of a system of licensing and—

(a) may assign the administration of that system and of the control and supervision of such centres to any person, body, or to Local Authorities as the Governor in Council thinks fit; and

(b) may provide for the fixing by any person, body or by Local Authorities of fees payable in connexion with a system of licensing such centres or the control and supervision of such centres.

(2) Save to the extent that any function concerning day care centres is assigned to any other person or body by regulations made in respect of day care centres under section 152 of this Act those regulations shall be administered by each Local Authority as a function of local government.

Each Local Authority, in respect of day care centres situated within the Area in which it exercises jurisdiction, may do all things required or permitted by the regulations to be done or necessary or desirable to be done with a view to the proper administration and enforcement of the regulations.”.

14. Amendment of s. 87. Section 87 of the Principal Act is amended by adding to the definition “ Court ” the words “ or an Acting Stipendiary Magistrate ”.

15. New s. 93A. The Principal Act is amended by inserting after section 93 the following section:—

“ **93A. Children's Court may make interim orders for custody.**

(1) When a Children's Court to which is made an application under section 93 of this Act adjourns the matter of the application (whether or not the proceeding has previously been adjourned) it may, after such inquiry as it thinks necessary, make an interim order regarding the custody of the infant concerned and regarding the right of access to the infant by either of his parents.

(2) An order made under the preceding subsection—

(a) shall remain in force until the expiration of three months from the date of its making or until the matter of the application again comes before the court, whichever first occurs; and

(b) shall not be subject to appeal, but otherwise shall be deemed to be an order that awards custody of an infant and, as the case may be, that awards right of access to the infant.

(3) The hearing of an application made under section 93 of this Act shall not be taken to have commenced by reason only of the making of an interim order under subsection (1) of this section or of the holding of an inquiry for that purpose, or both, and accordingly the matter of the application may be heard and determined by the Children's Court to which the application is made whether the court is constituted by the magistrate who made the order or by another magistrate.”.

16. Repeal of and new ss. 113 and 114. The Principal Act is amended by repealing sections 113 and 114 and inserting in their stead the following sections:—

“ **113. Authorization of street trading by child.** Street trading by a child is authorized if—

(a) the child is a male person who has attained the age of twelve years; and

- (b) the street trading by the child is carried on between the hours of six o'clock before noon and ten o'clock after noon and at no other time; and
- (c) in the case of the child concerned being of the age of compulsory attendance within the meaning of the *Education Act 1964-1970*, the street trading—
 - (i) is not carried on by the child at any time when his attendance at school is required by that Act or, as the case may be, at any time when the school that he attends is open for his attendance; and
 - (ii) does not involve his being absent from school at any time referred to in the preceding subparagraph (i).

114. Employment of child in unauthorized street trading prohibited. A person shall not use a child in street trading unless the street trading by the child is authorized by section 113 of this Act.”.

17. Amendment of s. 116. Section 116 of the Principal Act is amended by in subsection (3) omitting from paragraph (b) all words from and including the words “ or on a Sunday ” to the end of that subsection.

18. Amendment of s. 137. Section 137 of the Principal Act is amended by, in subsection (3), adding the following paragraph:—

“ A warrant issued under this subsection shall be executed according to its tenor by the person to whom it is directed or by any police officer, who may use therein such force as is reasonably necessary.”.

19. Amendment of s. 138. Section 138 of the Principal Act is amended by—

(a) omitting the note to the section appearing in and at the beginning of the section and inserting in its stead the following note:—

“ Report of proceeding concerning child prohibited.”;

(b) omitting subsections (1) and (2) and inserting in their stead the following subsections:—

“(1) When in a proceeding before any court, or before a justice taking an examination of witnesses in relation to an indictable offence a child is concerned, whether as the person against or in respect of whom the proceeding is taken or as a witness therein or as a person in respect of whom an offence is alleged to have been committed—

(a) a report, other than one made for the Department, or the Department of Justice, or the Police Department, shall not be made of the proceeding or any part thereof save upon the order of the court or justice:

- (b) a report of the proceeding or any part thereof made upon the order of the court or justice shall not reveal the name, address or school of the child or include any particular likely to lead to the identification of the child unless the court or justice expressly so permits;
- (c) there shall not be published any picture of or including the child or of or including any other person that is likely to lead to the identification of the child save upon the order of the court or justice.

(2) A person who makes a report or publishes any matter to which the preceding subsection applies save under the authority provided for by that subsection commits an offence against this Act.”.

20. **New s. 143A.** The Principal Act is amended by inserting after section 143 the following section:—

“**143A. Recoupment of expenses.** (1) Where it appears to the Director that a person who should care for a child in care is in such circumstances that he may reasonably be expected to contribute to the care and maintenance of the child, and that it is just that he should be called upon to so contribute, the Director may recover from him by proceedings in a court of competent jurisdiction, as for a debt due and owing by him to the Director and unpaid, the amount of expenses incurred by or on behalf of the Director on account of the care and maintenance of the child in care as at the date the order of the court is pronounced, or any part of that amount.

In a proceeding for the recovery of money under this subsection, a certificate purporting to be by the Director that it appears to him that the matters specified in the preceding paragraph as a condition precedent to his right of recovery are established shall be conclusive evidence of the existence of the condition precedent.

(2) For the purposes of subsection (1) of this section a person who should care for a child in care is the mother or father of the child in care, or a step-parent of the child in care, or, not being the father or mother of the child in care, is a person who is living or has lived in a connubial relationship with the mother or father of the child in care, but, in the lastmentioned two cases, only to the extent of expenses incurred while the person thereby made liable is or was the step-parent or, as the case may be, incurred during continuance of the relationship.

(3) Where pursuant to subsections (1) and (2) of this section two or more persons are liable in respect of the same expenses incurred, those persons shall be jointly and severally so liable.”.

21. Amendment of s. 152. Section 152 of the Principal Act is amended by omitting paragraph (8) and inserting in its stead the following paragraph:—

“(8) Day care centres and their establishment, control and supervision, standards and conduct; the duties and responsibilities of persons in charge of such centres; the fees to be paid in relation to such centres, the purposes of such fees and the persons and bodies to whom such fees are payable;”.