

Chapter 276.
Child Welfare Act 1961.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 276.

Child Welfare Act 1961.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Child Welfare Act 1961,

Being an Act relating to the welfare of children, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**care**” includes custody and control;

“**child**” means a boy or girl under the age of 16 years;

“**Children’s Court**” means a Children’s Court established under Section 28;

“**confinement expenses**” means—

- (a) the expenses of the maintenance of the mother during the period of one month immediately before the birth of her child; and
- (b) reasonable medical and nursing expenses attendant on the confinement of the mother; and
- (c) the expenses of the maintenance of the mother and child during the period of three months immediately after its birth;

“**the Council**” means the Child Welfare Council established under Section 4;

“**Court**” means—

- (a) a Children’s Court; or
- (b) a District Court exercising the jurisdiction of a Children’s Court under Section 33;

“**destitute child**” means a child who has no sufficient means of subsistence apparent to the Court and whose near relatives are, in the opinion of the Court—

- (a) in indigent circumstances and unable to support the child; or
- (b) dead, unknown or unable to be found; or
- (c) out of the jurisdiction; or
- (d) in the custody of the law;

“the Director” means the Director of Child Welfare appointed under Section 2;

“guardian” means the mother or the father of a child or a person having the immediate custody and control of a child;

“institution” means a mission station, reformatory, orphanage, school, home or other establishment—

- (a) approved by the Head of State, acting on advice under this Act; or
- (b) established by the State as an institution for the purposes of this Act;

“maintenance” includes the provision of food, clothing, lodging, nursing, medical treatment, necessities, training and education;

“maintenance order” means an order made by a court under this Act for payment of money by a near relative in respect of a child;

“Medical Officer” means a medical officer of the Public Service;

“near relative” means, subject to Section 67(1)—

- (a) in the case of a child other than an illegitimate child—the father, mother, stepfather or stepmother of the child; or
- (b) in the case of an illegitimate child—
 - (i) a person admitting himself or adjudged by a Court to be the father of the child; or
 - (ii) the husband of the mother of the child, if the child was born before the husband’s marriage to the mother of the child; or
 - (iii) the mother of the child; or
- (c) in the case of any child—a person, not being a person specified in Paragraph (a) or (b) of this definition, who is liable to maintain the child, including an adopting parent or a guardian but not including any other person whose liability to maintain the child is occasioned solely by or under this Act;

“neglected child” means a child—

- (a) who habitually begs or receives alms, whether under the pretext of sale or otherwise, or frequents a public place for the purpose of so begging or receiving alms; or

- (b) who frequents a public place or wanders about and does not satisfy a court having jurisdiction in respect of neglected children under this Act that he has a home or settled place of abode; or
- (c) who resides in a reputed brothel or associates or dwells with a person known to the police to be, or reputed to be, a prostitute, whether that person is the mother of the child or not; or
- (d) who associates or dwells with a person who—
 - (i) has been convicted of vagrancy; or
 - (ii) is known to the police as of bad repute; or
 - (iii) has been or is reputed to be a thief or habitual drunkard; or
- (e) whose home is, by reason of the neglect, cruelty or depravity of his parents or either of them, an unfit place for the child; or
- (f) who—
 - (i) is not provided with necessary food, clothing, lodging, medical aid or nursing; or
 - (ii) is neglected, ill-treated or exposed by his parents or either of them; or
- (g) who is of school age and is subject to a law relating to compulsory attendance at school, and—
 - (i) is an habitual truant from day school; or
 - (ii) whose parents have been convicted at least twice of neglecting to cause him to attend school; or
- (h) who endangers his life or limb by participating in a public exhibition or performance, or in preparation, training or rehearsal for a public exhibition or performance; or
- (i) who is engaged in street trading between the hours of 8 pm and 6 am, or at any time on a Sunday; or
- (j) who is living under conditions that indicate that he is lapsing or likely to lapse into a career of vice or crime; or
- (k) who is under incompetent or improper guardianship; or
- (l) who is destitute; or
- (m) who is falling into bad associations or is exposed to moral danger;

“**parent**”, in relation to a child, includes a step-parent, guardian and any person who is liable to maintain the child;

“**placed out**” means placed in employment without being apprenticed;

“**place of safety**” means an institution, police station, dwelling of a commissioned officer of the Police Force, hospital or other place the

occupier of which is willing temporarily to receive a child or young person;

“**public place**” includes a vessel, vehicle, room, field or other place to which the public for the time being have, or are permitted to have, access, whether on payment or otherwise;

“**the regulations**” means any regulations made under this Act;

“**street trading**” includes the hawking of newspapers, matches, flowers or other articles, the blacking of shoes and any other similar occupation carried on in a public place;

“**superintendent**”, in relation to an institution, means a person appointed to the position of superintendent of the institution;

“**this Act**” includes the regulations;

“**ward**” means a child—

- (a) committed to the care of the Director, or sent to an institution, in accordance with an order of a court having jurisdiction to do so under this Act; or
- (b) declared to be a ward under Section 41(2); or
- (c) admitted into a home for mentally defective children, for a period that has not expired;

“**welfare officer**” means a welfare officer appointed under Section 10.

PART II. – ADMINISTRATION.

Division 1.

The Director of Child Welfare.

2. THE DIRECTOR.

(1) The Minister may, by notice in the National Gazette, appoint an officer to be the Director of Child Welfare.

(2) The Director is responsible for the administration of this Act, and has such other powers, functions, duties and responsibilities as are prescribed by or under this Act or any other law.

3. DELEGATION.

The Director may, by instrument, delegate to a person or authority all or any of his powers, functions and authorities under this Act (except this power of delegation).

Division 2.

The Child Welfare Council.

4. THE COUNCIL.

(1) A Child Welfare Council is hereby established.

(2) The Council shall consist of–

(a) the Director; and

(b) a welfare officer; and

(c) two persons representing the interests of the Christian Missions in the country; and

(d) a lawyer of the Public Service; and

(e) a representative of the Police Force not below the rank of Inspector; and

(f) a representative of the Department of Education; and

(g) five persons, of whom–

(i) at least two are women; and

(ii) none is a person specified in Paragraph (a), (b), (c), (d), (e) or (f).

(3) The members of the Council other than the Director shall be appointed by the Minister.

(4) A member of the Council other than the Director holds office, subject to this Act, for a period of two years, but is eligible for re-appointment.

5. VACATION OF OFFICE.

A member of the Council shall be deemed to have vacated his office if—

- (a) he becomes bankrupt or insolvent, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary or remuneration for their benefit; or
- (b) fails to attend three consecutive meetings of the Council without leave of the Minister; or
- (c) becomes permanently incapable of performing the duties of his office; or
- (d) is convicted of an indictable offence; or
- (e) resigns his office by writing under his hand addressed to the Minister.

6. CHAIRMAN AND VICE-CHAIRMAN OF THE COUNCIL.

The Minister shall appoint a member of the Council to be the Chairman of the Council and another member to be the Vice-chairman of the Council.

7. MEETINGS OF THE COUNCIL.

(1) The Council shall meet at such times and places as the Director determines, and in any case not less frequently than once in every three months.

(2) The Minister may call a meeting of the Council.

(3) At a meeting of the Council—

- (a) either—
 - (i) the Chairman; or
 - (ii) in the absence of the Chairman—the Vice-chairman; or
 - (iii) in the absence of both the Chairman and the Vice-chairman – the lawyer appointed under Section 4(2)(d),
shall preside; and
- (b) seven members, of whom the Director or the welfare officer appointed under Section 4(2)(b) is one, are a quorum; and
- (c) subject to Section 8(1)(d) all matters before the meeting shall be determined in accordance with the votes of the majority of the members present; and
- (d) the member presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(4) The Council may make rules, not inconsistent with this Act, with respect to the order and conduct of its business and proceedings.

(5) A rule made under Subsection (4) is of no force or effect until it has been approved by the Minister.

8. FUNCTIONS OF THE COUNCIL.

(1) The functions of the Council are—

- (a) to advise the Director on child welfare in the country; and
- (b) to report to the Director on any child welfare matter referred to the Council by the Director; and
- (c) where the Council has reason to believe that a child may be in need of assistance or control under this Act, to request the Director—
 - (i) to investigate the question, whether the child is in need of assistance or control; and
 - (ii) to report to the Council at its next meeting—
 - (A) the investigations that he has made in respect of the request; and
 - (B) the conclusions that he has drawn from those investigations; and
- (d) where at least eight members of the Council are satisfied that the case of a child apparently in need of assistance or control under this Act should be considered by a Children's Court—to recommend to the Director that appropriate proceedings be taken to bring the case before a Children's Court; and
- (e) such other functions as are prescribed.

(2) The Council may appoint one or more of its members—

- (a) to investigate a matter relating to the discharge of a function of the Council; and
- (b) to report on that matter to the Council.

(3) Where in the opinion of a member of the Council—

- (a) a child may be in need of assistance or control under this Act; and
- (b) it is desirable that an investigation concerning the child be commenced without delay,

the member may request the Director to investigate the question whether the child is in need of that assistance or control.

(4) A member who has made a request to the Director under Subsection (3) shall report his request and his reasons for the request to the next meeting of the Council.

9. ANNUAL AND OTHER REPORTS.

(1) The Council shall, on or before 1 August in each year, give to the Minister a report on the working of this Act and any other matter relating to child welfare in the country.

(2) In addition to the reports prescribed by Subsection (1), the Council may at any time give to the Minister a report on any matter relating to child welfare in the country.

(3) As soon as practicable after receipt of a report under Subsection (1), the Minister shall present it to the Parliament.

Division 3.***Welfare Officers, Visitors, etc.*****10. WELFARE OFFICERS.**

(1) The Minister may appoint officers to be welfare officers for the purposes of this Act.

(2) Where by reason of an order made by a Court under this Act a child is under the supervision of the Director, a welfare officer shall, subject to any directions by the Director, exercise a general supervision over the child and, in particular, shall—

- (a) at such times or intervals as are ordered by the Court, or where no times or intervals are ordered at such times or intervals as he thinks proper—
 - (i) visit the child; and
 - (ii) obtain reports concerning the child; and
 - (iii) report to the Court as to the behaviour of the child; and
- (b) advise, assist and befriend the child; and
- (c) where necessary, endeavour to find suitable employment for the child.

11. VISITORS.

The Minister may appoint persons to be visitors to any of the institutions and homes established under this Act to carry out such duties as are prescribed.

12. HONORARY WELFARE OFFICERS AND HONORARY LADY VISITORS.

(1) After considering a recommendation from the Council, the Minister may appoint honorary welfare officers and honorary lady visitors.

(2) Honorary welfare officers and honorary lady visitors have such duties as are prescribed.

(3) The Director shall issue to honorary welfare officers and honorary lady visitors authority cards indicating the nature of their appointments.

PART III. – ALLOWANCES IN RESPECT OF CERTAIN CHILDREN.**13. CHILDREN TO WHOM PART III. APPLIES.**

This Part applies to–

- (a) destitute children; and
- (b) children who, in the opinion of the Director, have no sufficient means of support and whose near relatives are, in his opinion–
 - (i) in indigent circumstances and unable to support the child; or
 - (ii) dead, unknown or unable to be found; or
 - (iii) out of the jurisdiction; or
 - (iv) in the custody of the law.

14. PAYMENT OF ALLOWANCES.

(1) In such circumstances and subject to such conditions as are prescribed, the Director may, out of moneys appropriated for the purpose, grant an allowance for the support of a child to whom this Part applies, to–

- (a) the mother, where the child is living with her and where the mother is–
 - (i) a widow; or
 - (ii) a deserted wife; or
 - (iii) a wife whose husband is–
 - (A) incapacitated from following his usual or any occupation; or
 - (B) in prison; or
 - (iv) a single woman; or
 - (v) a woman living apart from her husband–
 - (A) under a decree of judicial separation; or
 - (B) under a deed of separation; or
 - (C) where a decree nisi for the dissolution of marriage has been made; or
 - (vi) a woman whose marriage has been dissolved by a decree absolute for dissolution of marriage; or
 - (vii) a woman whose marriage is void or has been annulled by a decree or order of the National Court in its matrimonial causes jurisdiction; or
- (b) a single woman who has adopted the child and with whom the child is living; or

- (c) the father, where the child is living with him and he is incapacitated from following his usual or any occupation, and is—
 - (i) a widower; or
 - (ii) a deserted husband; or
 - (iii) a husband whose wife is—
 - (A) incapacitated through mental or bodily infirmity; or
 - (B) in prison; or
- (d) in any other case—any person having, whether in law or otherwise, the custody or care of the child.

(2) An allowance under this Part shall not extend beyond the time when the child in respect of whom the allowance is granted has attained the age of 16 years, or such lesser age as the Director determines, unless—

- (a) he is an invalid or is otherwise incapacitated; or
- (b) the case possesses unusual features which call for special consideration, and the Director authorizes the payment, and in any case the payment may be continued until the child attains the age of 16 years.

15. FORM OF ALLOWANCE.

(1) An allowance under Section 14 may, in the discretion of the Director, be made in cash or by way of the provision of goods or services.

(2) The amount or value of an allowance under Section 14 shall not exceed the prescribed amount or value.

PART IV. – INSTITUTIONS.**16. APPROVAL OF INSTITUTIONS.**

(1) The Minister may approve a mission station, reformatory, orphanage, school, home or other establishment, whether within the country or not, as an institution for the purposes of this Act.

(2) An approval under Subsection (1) is subject to such conditions as are prescribed and to such other conditions as the Minister thinks proper.

17. ENTRY ON INSTITUTIONAL LAND.

The Minister, the Director, a welfare officer or the superintendent of the institution may—

- (a) enter or remain on any land used for the purposes of an institution; or
- (b) enter or remain on land reserved or set aside for the purposes of an institution established by the State; or
- (c) authorize a person to enter or remain on land specified in Paragraphs (a) and (b).

18. UNAUTHORIZED ENTRY ON INSTITUTIONAL LAND.

Subject to this Act, a person must not, without lawful excuse (proof of which is on him), enter or remain on land used for the purposes of an institution, or reserved or set aside for the purposes of an institution established by the State, unless—

- (a) he is a child who has been directed to be kept in the institution; or
- (b) he is an officer or employee of the Department of Health, or an agent or employee of an agent of that Department, and is acting in the course of and for the purposes of his duty; or
- (c) he is authorized to enter or remain on the land under Section 17; or
- (d) he is a minister of religion or a friend or relation of a ward, visiting a ward with the consent of, and subject to such conditions as are imposed by or by the authority of, the Director or the superintendent of the institution; or
- (e) his action is necessary for the protection of life or property; or
- (f) he is a member of the Council.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

19. UNAUTHORIZED COMMUNICATIONS WITH CHILDREN IN INSTITUTIONS.

(1) Subject to this Act, a person who—

- (a) without the authority or permission of the Director or the superintendent or person in charge of the institution, holds or attempts to hold any communication with a child placed in an institution under this Act; or
- (b) having entered an institution, or premises belonging to an institution, fails or neglects to depart from the institution or premises when required to do so by the superintendent or person in charge of the institution,

is guilty of an offence.

Penalty: A fine not exceeding K10.00 or imprisonment for a term not exceeding 10 days, or both.

(2) A person who holds or attempts to hold any communication, direct or indirect, with a child placed in an institution under this Act after having been forbidden to do so by the Director or the superintendent or person in charge of the institution is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding three months, or both.

20. MEDICAL EXAMINATION OF CHILDREN IN INSTITUTION.

The Director or a person authorized in writing by the Director to act under this section may order that a child admitted to an establishment under the control of the Director be examined to obtain information concerning the child's medical, physical or mental characteristics.

PART V. – MENTALLY DEFECTIVE CHILDREN.**21. INTERPRETATION OF PART V.**

In this Part, unless the contrary intention appears—

“**home**” means a home established under Section 22;

“**mental defectiveness**” means a condition of arrested or incomplete development or degeneration of mind from whatever cause arising;

“**mentally defective child**” includes a child (not being a person of unsound mind as that expression is used in the *Public Health Act 1973*) who has been committed to the care of the Director or committed to an institution, and in whom there exists mental defectiveness so pronounced that he requires supervision and control for his own protection, or for the protection of others.

22. ESTABLISHMENT OF HOMES.

The Minister may, by notice in the National Gazette, establish homes for the reception, detention, maintenance, education and training of mentally defective children whose cases call for segregation and special treatment.

23. INSPECTION OF HOMES.

(1) A home established under Section 22 shall be inspected once at least in every month by an officer appointed for the purpose by the Minister.

(2) An officer appointed under Subsection (1) shall, after each inspection, submit to the Director a report dealing with such matters in relation to the home as are prescribed.

24. ADMISSION TO HOME.

Where the Director is satisfied by the certificates of two medical practitioners authorized by the Director of Health, given after separate examination apart from each other, that a child is a mentally defective child, he may order that the child be admitted to a home.

25. CARE OF CHILDREN IN HOMES.

A mentally defective child admitted to a home—

- (a) is in the care of the superintendent; and
- (b) notwithstanding that he has attained the age of 16 years, may be detained at the home until he is discharged under Section 26.

26. DISCHARGE FROM HOME.

(1) Where the Director or a Medical Officer is satisfied, on medical evidence or on such other evidence (if any) as he thinks necessary, that it is no longer necessary that a person who has been admitted to a home as a mentally defective child should be further detained in a home, he may, by order in the prescribed form under his hand, direct that the person be discharged.

(2) Where the Director or a Medical Officer is satisfied, on medical evidence or on such other evidence (if any) as he thinks necessary, that a person who has been admitted to a home as a mentally defective child might in his own interests be released on licence, he may release the person on licence subject to such conditions as are prescribed or as the Director or Medical Officer in any particular case thinks proper.

(3) Where the Director is satisfied that a person released on licence under Subsection (2) has failed to comply with any of the conditions of the licence the Director may—

- (a) revoke the licence; and
- (b) by order in the prescribed form under his hand, direct that the person be detained in a home for a further period.

(4) Where an order is made under Subsection (3)(b) in relation to a person, a welfare officer or a member of the Police Force may, without further warrant, arrest the person and convey him to the home specified in the order to be received and detained in accordance with this Act.

27. POWERS OF SUPERINTENDENTS AND OFFICERS OF HOMES.

The superintendent of a home, and an officer or employee of a home authorized in writing by the superintendent, has, for the purpose of—

- (a) conveying a person who has been ordered to be admitted to a home as a mentally defective child to or from the home; or
- (b) apprehending such a person and bringing him back to the home in case of his escape and refusal to return,

all the powers, immunities and privileges of a constable while engaged in his duties in that regard.

PART VI. – CHILDREN’S COURTS.**28. ESTABLISHMENT OF CHILDREN’S COURTS.**

(1) The Head of State, acting on advice, may by notice in the National Gazette, establish special courts, to be called Children’s Courts.

(2) The Head of State, acting on advice, may, by notice in the National Gazette–

- (a) determine the area in and for which a Children’s Court may exercise its jurisdiction and the name by which the Court may be referred to; and
- (b) appoint a justice to be the magistrate of a Children’s Court; and
- (c) subject to Subsection (3) appoint such persons as he thinks proper to be members of a Children’s Court; and
- (d) determine the respective seniorities of the members of a Children’s Court appointed under Paragraph (c); and
- (e) appoint a person to be the clerk of a Children’s Court.

(3) The power of appointment under Subsection (2)(c) shall be exercised in such a way as to ensure that at least one member of a Children’s Court is a woman.

29. EXERCISE OF JURISDICTION OF CHILDREN’S COURT.

(1) Subject to this section, the jurisdiction of a Children’s Court shall be exercised by the magistrate of the Court and one member of the Court appointed under Section 28(2)(c).

(2) Where it is not possible or convenient for the magistrate of a Children’s Court to attend a sitting of that Children’s Court, the magistrate of any other Children’s Court may attend and act in his place.

(3) Subject to Subsection (4), one member of a Children’s Court appointed under Section 28(2)(c) may sit and adjudicate with the magistrate of that Children’s Court or a magistrate acting under Subsection (2).

(4) Where two or more persons are appointed under Section 28(2)(c) to be members of a Children’s Court, the exercise in relation to any matter before the Court of the right under Subsection (3) to sit and adjudicate with a magistrate shall be determined, as between the members available and willing to act, according to agreement of those persons or, failing agreement, according to seniority.

(5) Where a Magistrate of a District Court is satisfied that–

- (a) circumstances exist that prevent the magistrate of a Children’s Court from acting in relation to a particular matter under this Act; and
- (b) in the interests of justice he should act in the place of the magistrate of the Children’s Court,

he may act in and in relation to the matter as if he had been appointed to be the magistrate of the Children's Court.

30. DECISIONS OF CHILDREN'S COURTS.

Where the persons sitting as a Children's Court are divided in opinion as to the decision to be given on a question, the question shall be decided according to the opinion of the magistrate.

31. CHILDREN'S COURTS DEEMED TO BE DISTRICT COURTS.

In relation to any matter under this Act, a Children's Court shall, for all purposes, be deemed to be a District Court.

32. POWERS OF CHILDREN'S COURTS.

¹(1) Subject to this Act, a Children's Court—

- (a) shall, in respect of all offences committed by children, exercise the powers and authorities possessed by a District Court; and
- (b) may, where a child is charged with an indictable offence (other than a homicide or rape, or any other offence punishable by death or imprisonment for life), hear and determine the charge in a summary manner in accordance with the provisions of this Act; and
- (c) shall hear and determine all complaints and applications under this Act.

(2) Where a Children's Court deals summarily with an offence (other than a homicide or rape, or any other offence punishable by death or imprisonment for life) committed by a child, the Court may—

- (a) impose a penalty of—
 - (i) a fine not exceeding K100.00; or
 - (ii) imprisonment for a term not exceeding six months,

and, in addition to or instead of any penalty imposed under Subparagraph (i) or (ii) make an order in respect of the child as if the child had been declared to be an incorrigible or uncontrollable child under this Act; or

- (b) without proceeding to conviction—
 - (i) if the child is under the age of 14 years, and it appears to the Court that punishment inflicted by a guardian of the child, or some other person, would be the most suitable penalty in the circumstances—adjourn the hearing for that purpose; or
 - (ii) order a guardian or the guardians of the child to give security for the good behaviour of the child until the child attains the age of

¹ Section 32 amended by No. 33 of 1983.

16 years, or during such shorter period as the Court thinks sufficient; or

(iii) adjourn the hearing for such period as the Court thinks proper to enable the child—

(A) to do such acts or things for the purpose of remedying or diminishing any damage done or injury or loss caused by the child; or

(B) to undergo such discipline or instruction for the purpose of his reform or rehabilitation,

as the Court, on the recommendation of a welfare officer, sees fit to order,

and on being satisfied that suitable punishment has been inflicted, or the security has been given or the acts or things have been performed, or the discipline or instruction has been undergone, as the case may be, dismiss the charge and give a certificate of dismissal.

(3) An order under Subsection 2(a) takes effect—

(a) where a sentence of imprisonment is awarded—immediately after the imprisonment is served; or

(b) where no sentence of imprisonment is awarded—on the making of the order,

as if the order had been made under Section 41.

(4) Where a court other than a Children's Court deals with an offence (other than a homicide or rape, or any other offence punishable by death or imprisonment for life) committed by a child, that court may exercise the powers of a Children's Court under Subsection (2), and an order made in the exercise of those powers has effect as if it were an order of a Children's Court.

(5) Where a court other than a Children's Court deals with an offence (other than a homicide or rape, or any other offence punishable by death or imprisonment for life) committed by a person over the age of 16 years but under the age of 21 years, the court may, where it thinks it for any reason desirable—

(a) treat the person as a child for the purposes of this Act; and

(b) exercise in relation to him, the powers of a Children's Court under Subsection (2),

and an order made in the exercise of those powers has effect as if it were an order of the Children's Court.

(6) A Children's Court is not bound by a minimum penalty prescribed for an offence dealt with by it and may disregard the minimum penalty prescribed in imposing a penalty.

33. JURISDICTION OF DISTRICT COURTS IN CHILD WELFARE MATTERS.

(1) Subject to this section, after the establishment of a Children's Court no District Court has jurisdiction within the area of a Children's Court in respect of matters within the jurisdiction of the Children's Court.

(2) Subsection (1) does not abridge or prejudice—

- (a) the ministerial powers of justices in cases of committal for trial; or
- (b) the powers of justices to—
 - (i) take an information, complaint or application; or
 - (ii) issue a summons; or
 - (iii) grant, issue or endorse a warrant; or
 - (iv) admit to bail.

(3) Where no Children's Court has been established to exercise jurisdiction under this Act over a particular area, a District Court may exercise in that area the jurisdiction of a Children's Court under this Act as if it were a Children's Court.

34. SITTINGS OF CHILDREN'S COURTS.

(1) Subject to this section, a Children's Court shall be held—

- (a) in such place as the Head of State, acting on advice, directs; and
- (b) in a building approved or appointed by the Head of State, acting on advice, for the holding of a Children's Court.

(2) The Head of State, acting on advice, shall not approve or appoint a magistrate's office or a building used for court proceedings other than proceedings of a Children's Court to be a building for the holding of a Children's Court unless in the opinion of the National Executive Council no other suitable building is available.

(3) Where a magistrate's office or a building used for court proceedings other than proceedings of a Children's Court is approved or appointed by the Head of State, acting on advice, for the holding of a Children's Court, the Children's Court shall not be held in that office or building at a time when the ordinary business of the office or the ordinary court business of the building is being transacted.

35. PUBLICITY OF PROCEEDINGS.

(1) A Children's Court may order a person not directly interested in a hearing or trial by the Children's Court not to remain in or enter a room or place in which the hearing or trial is being held, or remain within the hearing of the Court.

(2) A person who remains in or enters a room or place or remains within the hearing of the Court in contravention of an order under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K10.00 or imprisonment for a term not exceeding 10 days, or both.

(3) A person who publishes a report of proceedings or the result of proceedings before a Children's Court is guilty of an offence unless—

- (a) the Court expressly authorizes the publishing; or
- (b) the publishing is done by the person in the performance of his official duties under an Act.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding three months, or both.

PART VII. – DESTITUTE, NEGLECTED, INCORRIGIBLE AND UNCONTROLLABLE CHILDREN.

36. TAKING OF CHILD INTO CUSTODY.

(1) A welfare officer, commissioned officer of the Police Force or person authorized in writing by the Minister to act under this subsection may, without warrant, take into custody a child appearing or suspected by him to be a destitute, neglected, incorrigible or uncontrollable child.

(2) A person who takes a child into custody under Subsection (1) shall immediately inform the Director.

37. PLACEMENT OF CHILD PENDING HEARING, ETC.

(1) Pending the hearing or during an adjournment of the case, a child taken into custody under Section 36(1) shall be placed—

- (a) in an institution; or
- (b) with a respectable person who has made with the Director such arrangement or agreement as the Director thinks necessary or proper for the custody and maintenance of children of the class to which the child belongs; or
- (c) in the dwelling of an officer of the Police Force at prescribed rates of payment; or
- (d) subject to Subsection (2), in a corrective institution or police lock-up.

(2) A child shall not be placed in a corrective institution or police lock-up unless—

- (a) there is pending against him a charge of so serious a nature that his safe custody is of paramount importance; or
- (b) there is no other practicable method of keeping the child in custody.

38. DEALING WITH CHILD TAKEN INTO CUSTODY.

(1) Where the Director is informed that a child has been taken into custody under Section 36(1), he shall ensure that—

- (a) the child is, as soon as is practicable and not later than seven days after the time when the Director is so informed, brought before a Children's Court under an application that he be declared a destitute, neglected, incorrigible or uncontrollable child; or
- (b) if the child has not been so brought before a Children's Court before the end of the period of seven days after the time when the Director is so informed—he is immediately released from custody.

(2) The Director, a welfare officer, an officer of the Police Force or a person authorized in writing by the Minister to act under Section 36(1) may apply to a

Children's Court to have a child taken into custody under that section declared a destitute, neglected, incorrigible or uncontrollable child.

(3) An application under this section may be in the prescribed form, or if no form is prescribed, a form approved by the Children's Court.

39. APPLICATION BY PERSON HAVING CARE, ETC., OF CHILD TO HAVE CHILD DEALT WITH UNDER PART VII.

(1) A person who has the actual care and control of a child may apply to a Children's Court to have the child declared to be a destitute, neglected, incorrigible or uncontrollable child.

(2) A Children's Court to which application is made under Subsection (1) may—

- (a) appoint a time for the hearing of the application; and
- (b) order that the child be brought before the Court at the time appointed for the hearing.

40. ATTENDANCE OF GUARDIANS AT HEARING.

(1) A reference in this section to the guardian of a child shall be read as a reference to the guardian having the actual care of the child.

(2) Where a child—

- (a) is brought before a Children's Court under an application that the child be declared a destitute, neglected, incorrigible or uncontrollable child; or
- (b) is charged with having committed an offence,

the guardian of the child shall attend the Court during the proceedings unless the Court is satisfied that it would be unreasonable to require his attendance.

(3) Where a child is taken into custody under this Act or is arrested, the person by whom he was taken into custody or arrested or the officer-in-charge of the police station to which he is brought, as the case may be, shall cause a notice in the prescribed form to be served on the guardian of the child (if he can be found), warning him to attend the Court at the hearing of the application or charge.

(4) If the guardian is not the father of the child, the Court may direct the father to attend at the hearing or further hearing of the application or charge.

(5) If a guardian or father fails, without reasonable excuse, to attend the Court as required by or under this section, the Court may issue a warrant to bring him before the Court at the hearing or further hearing.

(6) A guardian in respect of whom a warrant is issued under Subsection (5) may be admitted to bail on entering into a recognizance, with or without sureties, to attend the Court at the hearing of the application or charge.

(7) If the Court finding a child guilty of an offence, or to be destitute, neglected, incorrigible or uncontrollable, is of opinion that a guardian of the child is wholly or partly responsible through some fault of, or lack of proper care or control on the part

of, the guardian, it may, on the hearing or on an adjournment of the hearing, and without complaint laid for the purpose, punish the guardian—

- (a) by imposing a fine not exceeding K400.00; or
- (b) by imposing a sentence of imprisonment for a term not exceeding 12 months; or
- (c) by imposing a penalty specified in Paragraph (a) or (b) and suspending it on such conditions as the Court on the recommendation of a welfare officer, thinks proper; or
- (d) by making an order against the guardian in the same terms and having in all respects the same force and effect as an order made under Section 94 of the *Liquor (Licensing) Act 1963*,

but a guardian shall not be dealt with under this subsection unless he is in attendance at the Court and has had an opportunity of showing cause why he should not be so dealt with.

41. POWERS OF CHILDREN'S COURT ON HEARING OF APPLICATION.

(1) On the hearing of an application that a child be declared a destitute, neglected, incorrigible or uncontrollable child, a Children's Court, on being satisfied that the application should be granted may—

- (a) declare the child to be a destitute, neglected, incorrigible or uncontrollable child; and
- (b) order a child so declared to be—
 - (i) committed to the care of the Director; or
 - (ii) committed to the care of a person who is willing to undertake the care on such terms and conditions as the Court thinks proper until the child attains the age of 16 years or during such shorter period as the Court thinks proper; or
 - (iii) sent to an institution specified in the order and detained or otherwise dealt with there under this Act until the child attains the age of 16 years or during such shorter period as the Court thinks proper; or
 - (iv)² released on probation under the *Probation Act 1979*.

(2) Where a Children's Court declares a child to be a destitute, neglected, incorrigible or uncontrollable child and makes in relation to the child an order made under, or having effect as if it were made under, Subsection (1)(b)(ii), the Court may declare the child to be a ward during the period to which the order relates.

² Section 41(1)(b)(iv) amended by *Child Welfare (Consequential Amendment) Act 1990*.

42. EFFECT OF DECLARATIONS, ETC., AS TO CHILDREN.

(1) Subject to Subsections (2) and (5), where in accordance with this Act, an order is made that a child be released on probation—

- (a) the Clerk of the Court making the order shall forward a copy of the order to the Director; and
- (b) while the order is in force—
 - (i) the child is subject to the supervision of the Director for the period specified in the order; and
 - (ii) a person authorized in writing by the Director to do so may enter the premises where the child resides and may inspect them and the child.

(2) Notwithstanding Subsection (1), the Director may, by order, declare that he shall remain the guardian of the child named in the order until the child attains the age of 21 years, and in that case the child is, during that period, subject to the supervision of the Director.

(3) Where, in accordance with this Act, an order is made that a child be committed to the care of a person who is willing to undertake the care—

- (a) the Court making the order shall not commit the child to the care of a person of a religious faith objected to by the father, guardian or other person having the right to direct in what religion the child shall be educated; and
- (b) the Clerk of the Court making the order shall forward a copy of the order to the Director; and
- (c) while the order is in force—
 - (i) the person to whose care the child is committed is entitled to the care of the child; and
 - (ii) a person authorized in writing by the Director to do so may enter the premises where the child resides and may inspect them and the child.

(4) Where, in accordance with this Act, an order is made that a child be committed to the care of the Director, the child is subject to the supervision of the Director while the order is in force.

(5) Subject to Subsection (2), an order made or having effect as if it were made under Section 41 ceases to be in force when the period specified in the order expires or the child named in the order attains the age of 16 years, whichever first occurs.

43. EFFECT OF COMMITTAL TO CARE OF DIRECTOR.

Where, in accordance with this Act, a child is committed to the care of the Director, the order of committal is sufficient authority to a commissioned officer of the Police Force or a person authorized in writing by the Director for the purpose to

take the child to an institution nominated for the reception of the child by the Director or, if the Director does not nominate an institution for that purpose, to the nearest or most convenient institution.

44. BREACHES OF TERMS OF PROBATION, ETC.

(1) In this section, “**child**” includes a person who, as a child, has been released on probation, or committed to the care of a person, under this Act.

(2) Where a child who has been released on probation, or committed to the care of a person under this Act breaks or is reasonably suspected of having broken—

- (a) the terms or conditions of his release; or
- (b) the terms or conditions on which he was committed to the care of a person,

the child may, without warrant, be taken into custody by a commissioned officer of the Police Force or a person authorized in writing by the Minister to act under this section and detained until he can be brought before a Children’s Court.

(3) Sections 36(2), 37 and 38 apply to and in relation to a child taken into custody under this section as if the child had been taken into custody under Section 36(1).

(4) Where a commissioned officer of the Police Force or a person authorized in writing by the Minister to act under this section makes oath before a justice that a child who has been released on probation, or committed to the care of a person under this Act has broken the terms or conditions of his release, or the terms and conditions on which he was committed to the care of a person, the justice may issue his summons for the appearance of the child before a Children’s Court.

(5) If it is proved that a child brought before a Children’s Court under this section, or appearing before a Children’s Court in answer to a summons under this section, has broken the terms or conditions on which he was committed to the care of a person, the Court may—

- (a) where the child has not attained the age of 16 years, exercise in respect of the child any of the powers specified in Section 41(1)(a) and (b); or
- (b) where the child has attained the age of 16 years, order him to pay a fine not exceeding K100.00 or in default, to be imprisoned for a term not exceeding six months.

(6) An order under Subsection (5)(a) has effect as if it were made under Section 39.

45. VARIATION OF ORDERS FOR PROBATION OR COMMITTAL.

(1) A Children’s Court may vary the period or conditions of, or terminate, any probation or any committal to the care of a person that it has imposed on a child under this Act.

(2) On the application of a person authorized by the Director for the purpose, a Children's Court that has made an order that a child be released on probation to, or committed to the care of, a person may vary the order by substituting the name of another person for that of a person named in the order.

46. CONTEMPT OF COURT, ETC.

(1) A person who—

- (a) wilfully interrupts the proceedings of a Court; or
- (b) conducts himself disrespectfully to the magistrate or a member of a Court during the sittings of the Court; or
- (c) obstructs or assaults a person in attendance at a Court or an officer of a Court—
 - (i) in the execution of his duty; and
 - (ii) in view of the Court; or
- (d) wilfully disobeys an order made by a Court that all witnesses (except the parties and any of their witnesses whom the Court sees fit to except) go and remain outside and beyond the hearing of the Court until required to give evidence,

is guilty of an offence.

Penalty: A fine not exceeding K10.00 or imprisonment for a term not exceeding 10 days.

(2) A person who, in the opinion of the Court, wilfully prevaricates in giving evidence to a Court is guilty of an offence.

Penalty: A fine not exceeding K10.00 or imprisonment for a term not exceeding 10 days.

(3) A Court in whose presence an offence under this section is committed may—

- (a) immediately convict the person guilty of the offence either on its own view or on the oath of a credible witness; and
- (b) issue its warrant of commitment accordingly.

(4) Every warrant of commitment under this section is good without any other order, summons or adjudication.

(5) If a person convicted of an offence against Subsection (1) makes to the convicting Court, before the rising of the Court, such apology for the interruption or misbehaviour as the Court in its uncontrolled discretion considers satisfactory, the Court may remit the penalty wholly or in part.

47. APPEALS, ETC.

(1) A Children's Court in its discretion may—

- (a) reserve for the consideration of the National Court any question of law arising on or out of the hearing or determination of an information, complaint or application; and
- (b) state a special case for the opinion of the National Court.

(2) There shall be an appeal to the National Court from any conviction, order or adjudication of a Children's Court.

(3) The law relating to appeals from District Courts applies, so far as it is applicable, to an appeal from a Children's Court under this section, whether by way of special case or otherwise.

PART VIII. – TRANSFER OF MINORS FROM CORRECTIVE INSTITUTIONS, ETC., TO INSTITUTIONS UNDER THIS ACT.

48. ORDERS FOR TRANSFER.

(1) The Director may, with the consent of the Minister, direct by written order, the transfer of a prisoner who is under the age of 21 years and undergoing sentence of imprisonment from a correctional institution or police lock-up to an institution.

(2) A person transferred under Subsection (1) shall be detained in the institution to which he is transferred for the balance of his sentence and is subject to the discipline and routine of that institution.

(3) An order under this section is authority for the detention in an institution of the person to whom it relates until the expiration of the residue of his sentence.

(4) Where the Director is satisfied that a person transferred to an institution under this section—

- (a) is not profiting from the discipline and instruction in the institution; or
- (b) for any other reason is not a suitable person for detention in the institution,

the Director may, with the consent of the Minister, order his transfer to a correctional institution or police lock-up, to serve the unexpired portion of his original sentence, and thereupon the person ceases to be subject to this Act.

(5) This section does not affect the operation of any law relating to the remission of sentences.

PART IX. – AFFILIATION PROCEEDINGS.

49. INTERPRETATION OF PART IX.

(1) In this Part–

“**magistrate**” means a magistrate of a court.

(2) In this Part, unless the contrary intention appears, a reference to a birth or the date of a birth shall be read with the necessary modifications, as including a reference to, or to the date of, a stillbirth or a miscarriage (other than a wilful abortion).

50. AFFILIATION PROCEEDINGS BEFORE BIRTH OF CHILD.

(1) In this section, “**man**” means a male person over the age of 16 years at the time of the making of the complaint.

(2) Where a single woman is pregnant by a man who has not made adequate provision for the payment of confinement expenses in connection with the birth of the child, a complaint may be made, in accordance with this section, before a magistrate–

(a) by the woman; or

(b) with the consent of the woman, by–

(i) the Director; or

(ii) a person authorized in writing by the Director to make a complaint under this Part.

(3) A complaint under this section–

(a) shall be–

(i) in writing; and

(ii) on oath; and

(b) shall state–

(i) that the woman is pregnant; and

(ii) the name of the man by whom she is pregnant; and

(iii) that the man by whom she is pregnant is over the age of 16 years and has not made adequate provision for the payment of the confinement expenses in connection with the birth of the child.

(4) In any proceedings under this Part, an allegation in a complaint under this section that a specified person was at the time of the making of the complaint over the age of 16 years shall, in the absence of proof to the contrary, be deemed to be proved.

51. AFFILIATION PROCEEDINGS AFTER BIRTH OF CHILD.

(1) Where the father of an illegitimate child has left it without means of support and is over the age of 16 years, a complaint may be made, in accordance with this section before a magistrate—

- (a) by the mother of the child; or
- (b) by the Director; or
- (c) by a person authorized in writing by the Director to make a complaint under this Part.

(2) A complaint under this section—

- (a) shall be—
 - (i) in writing; and
 - (ii) on oath; and
- (b) shall state—
 - (i) the name of the mother of the child; and
 - (ii) the name of the child; and
 - (iii) the name of the father of the child; and
 - (iv) that the person named as the father of the child is over the age of 16 years and has left the child without means of support.

(3) In any proceedings under this Part an allegation in a complaint under this section that a specified person was at the time of the making of the complaint over the age of 16 years shall, in the absence of proof to the contrary, be deemed to be proved.

52. SUMMONS OR WARRANT ON COMPLAINT.

Where—

- (a) a complaint is made under Section 50 or 51; and
- (b) the complainant produces evidence on oath, either oral or on affidavit, in corroboration of some material particular as to the paternity of the child,

the magistrate before whom the complaint is made may—

- (c) summon the person complained against to appear before a court to answer the complaint; or
- (d) if satisfied that the circumstances require it, issue a warrant for his apprehension.

53. ORDER FOR PAYMENT OF CONFINEMENT EXPENSES.

(1) Subject to Subsection (2), where a court hearing a complaint under Section 50 is satisfied—

- (a) by the evidence of a medical practitioner, or by the certificate of a medical practitioner admitted as evidence with the consent of the defendant, that the woman is pregnant; and
- (b) that the defendant—
 - (i) is the person by whom the woman is pregnant; and
 - (ii) is over the age of 16 years,

the court may order the defendant to pay to the Director for confinement expenses such sum, not exceeding K150.00, as the court thinks proper.

(2) A court shall not make an order under Subsection (1)—

- (a) on the evidence of the mother, unless her evidence is corroborated in some material particular; or
- (b) if the court is satisfied that at the time when the child was conceived the mother was a common prostitute; or
- (c) if the evidence adduced indicates that it is impossible or unlikely that the defendant is the father of the child.

54. ORDER FOR PAYMENT OF MAINTENANCE.

A court ordering a defendant to pay for confinement expenses under Section 53 may at the same time order the defendant to pay to the Director, at such intervals as to the court seem proper, such sum for the maintenance of the child as the court thinks proper.

55. MAINTENANCE ORDER ON COMPLAINT AFTER BIRTH.

(1) Where a court hearing a complaint under Section 51 is satisfied that—

- (a) the child is illegitimate; and
- (b) the defendant—
 - (i) is the father of the child; and
 - (ii) is over the age of 16 years; and
 - (iii) has left the child without means of support,

the court may order the defendant to pay to the Director, weekly, such sum for maintenance of the child as the court thinks proper.

(2) A court ordering a defendant to pay for maintenance of a child under Subsection (1) may at the same time order the defendant to pay to the Director such sum, not exceeding K150.00, for confinement expenses, as the court thinks proper.

(3) A court shall not make an order under Subsection (1)—

- (a) on the evidence of the mother, unless her evidence is corroborated in some material particular; or
- (b) if the court is satisfied that at the time when the child was conceived the mother was a common prostitute; or
- (c) if the evidence adduced indicates that it is impossible or unlikely that the defendant is the father of the child.

56. DURATION OF ORDER FOR MAINTENANCE.

An order for maintenance under Section 54 or 55–

- (a) is not enforceable until notice of the date of birth of the child is served on the defendant; and
- (b) applies to the maintenance of the child from the date of birth of the child until–
 - (i) the child dies; or
 - (ii) the order is discharged by a court of competent jurisdiction; or
 - (iii) the child attains the age of 16 years,

whichever first occurs.

57. DISPOSAL OF MONEY PAID FOR CONFINEMENT EXPENSES.

(1) Subject to Subsection (2), the Director shall–

- (a) retain any sum paid to him under Section 53 until the child is born and then apply the sum towards payment of the confinement expenses; and
- (b) apply any sum paid to him under Section 55(2) towards payment of the confinement expenses; and
- (c) apply any sum paid to him under Section 54 or 55(1) towards payment of the cost of maintaining the child.

(2) Where any doubt or question arises as to the disposal of money paid for confinement expenses or maintenance under this Part a court may, on application by the Director or the mother of the child, by order give directions as to the disposal of the money.

58. ORDER ON ADMISSION OR PROOF OF POSSIBLE PARENTAGE IN CERTAIN CASES.

(1) Where, at the hearing of a complaint in respect of the maintenance of an illegitimate child, a male person over the age, or apparently over the age, of 16 years admits or says that he had sexual intercourse with the mother of the child in such circumstances that, in the opinion of the court, he may possibly be the father of the child, the court may, on the hearing and without complaint made for the purpose–

- (a) order him to pay to the Director, weekly, a sum for or towards maintenance of the child; and
- (b) if it thinks proper, at the same time order him to pay to the Director a sum for or towards confinement expenses in respect of the child,

but an order shall not be made under this subsection unless the male person is given an opportunity to be heard by the court in respect of the making of the order.

(2) An order may be made under Subsection (1) against each of any number of male persons.

(3) Without limiting the powers of a court to make any other order under this Act, where, on the hearing of a complaint in respect of the maintenance of an illegitimate child, it is proved to the satisfaction of the court that the defendant had sexual intercourse with the mother of the child so that, in the opinion of the court, the defendant may possibly be the father of the child, and the defendant is over the age of 16 years, the court may—

- (a) order him to pay to the Director, weekly, a sum for or towards maintenance of the child; and
- (b) if it thinks proper, at the same time order him to pay to the Director a sum for or towards confinement expenses in respect of the child.

(4) An order made under this section shall be deemed to be—

- (a) an order made under Section 55(1), if the order is an order to pay for or towards maintenance of the child, or
- (b) an order made under Section 55(2), if the order is an order to pay for or towards confinement expenses in respect of the child.

(5) The amount of a sum ordered by a court to be paid under this section to the Director—

- (a) weekly for or towards maintenance of an illegitimate child; or
- (b) for or towards confinement expenses in respect of an illegitimate child,

shall be such as the court thinks just, but so that neither the total of the sums ordered to be paid weekly under this Act for or towards maintenance of the child nor the total of the sums ordered to be paid under this Act for or towards confinement expenses in respect of the child exceeds respectively the sum to be paid weekly for maintenance of the child or the sum to be paid for confinement expenses in respect of the child that the court would have ordered if the hearing had been the hearing of a complaint under Section 51 and the person against whom the order is made had been the defendant at the hearing.

(6) A court shall not make an order under this section to pay for or towards maintenance of an illegitimate child or confinement expenses in respect of an illegitimate child—

- (a) on the evidence of the mother, unless her evidence is corroborated in some material particular; or

- (b) if the court is satisfied that at the time when the child was conceived the mother was a common prostitute; or
- (c) if the evidence adduced indicates that it is impossible or unlikely that the male person concerned is the father of the child.

(7) Where an application is made to a court for the making of an order under this section and the court refuses the application, the court shall make a memorandum of the refusal.

59. COMPLAINT BY DIRECTOR OR AUTHORIZED PERSON ON GROUND OF POSSIBLE PARENTAGE.

(1) The Director or a person authorized in writing by the Director to make a complaint under this Part may make a complaint against a male person over the age of 16 years at the time of the making of the complaint alleging that he had sexual intercourse with the mother of an illegitimate child in such circumstances that he may possibly be the father of the illegitimate child.

(2) A magistrate may—

- (a) summon a male person against whom a complaint is made under Subsection (1) to appear before a court and show cause why he should not pay for or towards—
 - (i) past or future maintenance of the illegitimate child; and
 - (ii) confinement expenses in respect of the illegitimate child; or
- (b) if satisfied that the circumstances require it, issue a warrant in the first instance for his apprehension.

(3) If, at the hearing of the complaint, the court is satisfied that the person complained against—

- (a) had sexual intercourse with the mother of the illegitimate child in such circumstances that he may possibly be the father of the child; and
- (b) was over the age of 16 years at the time of the making of the complaint,

the court may—

- (c) order him to pay to the Director, weekly, a sum for or towards maintenance of the child; and
- (d) if it thinks proper, at the same time order him to pay to the Director a sum for or towards confinement expenses in respect of the child.

(4) A complaint or an order under this section may be made against each of any number of male persons.

(5) An order made under this section shall be deemed to be—

- (a) an order made under Section 55(1), if the order is an order to pay for or towards maintenance of the child; or

- (b) an order made under Section 55(2), if the order is an order to pay for or towards confinement expenses in respect of the child.

(6) A court hearing a complaint under this section may vary an order made under this Act for the payment of—

- (a) a sum weekly for or towards maintenance of the child; or
- (b) a sum for or towards confinement expenses in respect of the child.

(7) The amount of a sum ordered by a court to be paid under this section to the Director—

- (a) weekly for or towards maintenance of an illegitimate child; or
- (b) for or towards confinement expenses in respect of an illegitimate child,

shall be such as the court thinks just, but so that neither the total of the sums ordered to be paid weekly under this Act for or towards maintenance of the child nor the total of the sums ordered to be paid under this Act for or towards confinement expenses in respect of the child exceeds respectively the sum to be paid weekly for maintenance of the child or the sum to be paid for confinement expenses in respect of the child that the court would have ordered if the hearing had been the hearing of a complaint under Section 51 and a male person against whom an order is made or varied under this section had been the defendant at that hearing.

(8) A court shall not make an order under this section to pay for or towards maintenance of an illegitimate child or confinement expenses in respect of an illegitimate child—

- (a) on the evidence of the mother, unless her evidence is corroborated in some material particular; or
- (b) if the court is satisfied that at the time when the child was conceived the mother was a common prostitute; or
- (c) if the evidence adduced indicates that it is impossible or unlikely that the male person concerned is the father of the child.

(9) In any proceedings under this section, an allegation in a complaint that a specified person was at the time of the making of the complaint over the age of 16 years shall be deemed, in the absence of proof to the contrary, to be proved.

60. FUNERAL EXPENSES OF ILLEGITIMATE CHILD.

(1) Where an illegitimate child dies, a court may, on application by the Director or the mother of the child, by order—

- (a) direct a person admitting himself or adjudged by a court to be the father of the child to pay such sum to the Director as the court thinks reasonable for or towards the funeral expenses of the child; and
- (b) direct the Director as to the disposal of that sum.

(2) Where the mother of an illegitimate child (including a child that has been still-born after the commencement of the sixth month of pregnancy) dies during

childbirth or in consequence of childbirth, a court may, on the application of the Director, by order—

- (a) direct a person admitting himself to be, or found by a court to be, the father of the child to pay such sum to the Director as the court thinks reasonable for or towards the funeral expenses of the mother; and
- (b) direct the Director as to the disposal of that sum.

(3) For the purposes of this section, a person against whom an order is made under Section 53, 54, 55, 58 or 59 shall be deemed to have been found by the court that made the order to be the father of the child.

61. FAILURE TO COMPLY WITH ORDER.

(1) On written complaint and on oath being made to a magistrate by the Director or a person authorized in writing by the Director to make a complaint under this Part, that a person against whom an order relating to confinement expenses, maintenance or funeral expenses has been made under this Act—

- (a) has failed to comply with the order; or
- (b) is attempting to leave the country without making arrangements satisfactory to the Director for future payments under the order,

the magistrate may—

- (c) summon the person complained against to appear before a court to answer the complaint; or
- (d) if satisfied that the circumstances require it, issue a warrant in the first instance for the apprehension of the person complained against.

(2) If at the hearing of a complaint under this section the court is satisfied that the person complained against has failed to comply with the order, or is attempting to leave the country without making arrangements satisfactory to the Director for future payments under the order, the court may—

- (a) commit the person complained against to prison for a period not exceeding 12 months; or
- (b) require the person complained against to find security satisfactory to the court that—
 - (i) he will in future comply with the order; or
 - (ii) he will not leave the country without making arrangements satisfactory to the Director for future payments under the order,

as the case requires.

(3) A court may commit to prison, for a period not exceeding 12 months, a person required to find security under Subsection (2)(b) if he does not find security satisfactory to the court.

62. RETURN OF CONFINEMENT EXPENSES WHERE CHILD NOT BORN.

Where an order for payment of confinement expenses is made under this Part and no child is born within nine months after the date of the order to the woman in respect of whom the order is made, the Director shall return to the person against whom the order was made any money paid by him to the Director under the order.

63. MONEY DUE UNDER LAPSED MAINTENANCE ORDER.

The lapse of an order for maintenance under this Act does not affect the liability of the person against whom the order was made to pay any money due under the order at the time the order lapsed.

PART X. – WARDS.***Division 1.******General Responsibilities, etc., of Director.*****64. DIRECTOR AS GUARDIAN OF WARDS.**

(1) Notwithstanding any other law relating to the guardianship or custody of children, the Director—

- (a) is the guardian of every child who becomes a ward to the exclusion of the parent or other guardian; and
- (b) shall continue to be the guardian until the child ceases to be a ward; and
- (c) is responsible for the care and management of every ward and of the property of every ward.

(2) Subject to Subsection (3), the Director may terminate his guardianship of a ward at any time after the ward attains the age of 16 years.

(3) Where guardianship is not terminated under Subsection (2), the Director remains guardian until the person concerned attains the age of 21 years, and the person is subject to the supervision of the Director during that period.

65. CARE OF THE PERSON OF WARDS.

Subject to this Act, the Director has the care of the person of all wards, except while they are—

- (a) inmates of an institution or of a home for mentally defective children; or
- (b) boarded out or placed as adopted boarders with foster-parents; or
- (c) placed out or apprenticed with any other person.

66. CONTROL OF LAND OF WARDS.

Where a ward is or becomes entitled in possession to land (other than customary land), the Director—

- (a) has the control and management of the land; and
- (b) may apply the whole or any part of the income from the land or the proceeds of the sale of the land, or both, for the maintenance or benefit of the child; and
- (c) has and may exercise in respect of the land the same rights and powers as if the land—
 - (i) formed part of an intestate estate of which he was duly appointed the administrator; and
 - (ii) was the share of the child in that estate.

Division 2.

Maintenance, etc., of Wards Generally.

67. LIABILITY OF CERTAIN NEAR RELATIVES FOR MAINTENANCE.

(1) For the purposes of this section—

“father”—

- (a) includes, in the case of an adopted child, the husband of an adopting mother; and
- (b) means, in the case of an illegitimate child who is not adopted, a person admitting himself to be, or adjudged by a court to be, the father of the child;

“mother” includes, in the case of an adopted child, the wife of an adopting father;

“stepfather” means a man who marries the mother of the child after the death of the father of the child;

“stepmother” means a woman who marries the father of the child after the death of the mother of the child.

(2) The near relatives specified in Subsection (3) are liable to pay for or contribute towards the maintenance of a ward in accordance with their ability and in the order specified in that subsection.

(3) The liability specified in Subsection (2) lies—

- (a) on the father of the child; and
- (b) if the father is dead or unable to pay for all the cost of maintaining the child, on the mother of the child; and
- (c) if the father is dead and the mother is dead or unable to pay for all the cost of maintaining the child, on the stepfather (if any) of the child; and
- (d) if the mother is dead and the father is dead or unable to pay for all the cost of maintaining the child, on the stepmother (if any) of the child.

68. ENFORCEMENT PROCEEDINGS.

(1) The Director or a person authorized by him in writing to act under this section may make a complaint that a person liable to pay for or contribute towards the cost of maintaining a ward is able but refuses to do so.

(2) On complaint being made under Subsection (1), a justice may summon the person specified in the complaint to appear before a Court at a time and place appointed in the summons to show cause why he should not pay for or contribute towards the past or future maintenance of the child.

69. ORDER FOR PAYMENT OF MAINTENANCE.

Where at the hearing a Court is satisfied that a person summoned under Section 68—

- (a) is a near relative of and is liable to pay for or contribute towards the cost of the maintenance of the ward specified in the summons; and
- (b) is able to pay for or contribute towards the cost of the past or future maintenance of the child but refuses to do so,

the Court may order the person to pay to the Director—

- (c) such sum for or towards the cost of the past maintenance of the child, not being maintenance of the child after the child has attained the age of 16 years, as the Court thinks appropriate; or
- (d) such weekly sum for or towards the cost of the future maintenance of the child for such period until the child attains the age of 16 years as the Court thinks appropriate,

or both.

70. CERTAIN ALLEGATIONS IN COMPLAINT PRIMA FACIE EVIDENCE.

Subject to Section 71, on the hearing of a complaint in respect of the maintenance of a ward, an allegation in the complaint—

- (a) that the person complained against is liable under Section 67, and able, to pay for or contribute towards the cost of the maintenance of the child; or
- (b) that a specified sum—
 - (i) has been expended on; or
 - (ii) is due or owing for or in respect of,

the cost of the maintenance of the child,

is *prima facie* evidence of the matter alleged.

71. PROOF OF PATERNITY.

(1) On the hearing of a complaint against a person in respect of the maintenance of an illegitimate ward, an allegation in the complaint that the person is the father of the child is not evidence of the matter alleged, but a Court hearing the complaint may, subject to Subsection (2), adjudge him to be the father of the child and make an order against him under this Part.

(2) A person shall not be adjudged to be the father of the ward—

- (a) on the evidence of the mother, unless her evidence is corroborated in some material particular; or

- (b) if the Court hearing the complaint is satisfied that at the time the child was conceived the mother was a common prostitute; or
- (c) if the evidence adduced indicates that it is impossible or unlikely that he is the father of the child.

Division 3.

General.

72. WARDS ABSCONDING OR ILLEGALLY REMOVED FROM PROPER CUSTODY.

(1) A justice may issue a warrant for the apprehension of a ward who has absconded or been illegally removed from his proper custody.

(2) A ward who absconds from his proper custody is guilty of an offence.

(3) A Court finding a ward guilty of an offence against Subsection (2) may, subject to Subsection (6)–

(a) order the ward to be–

(i) committed to the care of the Director; or

(ii) committed to the care of a person who is willing to undertake the care on such terms and conditions as the Court thinks proper until the child attains the age of 16 years, or during such shorter period as the Court thinks proper; or

(iii) sent to an institution specified in the order and detained or otherwise dealt with there under this Act until the child attains the age of 16 years or during such shorter period as the Court thinks proper; or

(iv) released on probation on such conditions (if any) as the Court orders; or

(b) return the ward to his former custody.

(4) The Director shall ensure that a ward who has been apprehended on a warrant issued under Subsection (1) is as soon as practicable–

(a) if the child has absconded from his proper custody–brought before a Court; or

(b) if the child has been illegally removed from his proper custody–placed in an institution or the dwelling of a commissioned officer of the Police Force.

(5) A ward who–

(a) has been temporarily released from his proper custody; and

(b) fails to return to that custody in accordance with the conditions of his temporary release,

shall be deemed to have absconded from his proper custody.

(6) An order made or having effect as if it was made under this section ceases to be in force when the period specified in the order expires or the ward attains the age of 16 years, whichever first happens.

73. APPRENTICING AND PLACING IN EMPLOYMENT OF WARDS.

(1) The Director or a person authorized by him in writing to act under this section may—

- (a) bind a ward or cause a ward to be bound as an apprentice; or
- (b) if in the opinion of the Director it is not possible or desirable to take action under Paragraph (a)—place the ward in suitable employment without apprenticeship.

(2) Where a ward is apprenticed or placed out under this section, the contract of apprenticeship or employment—

- (a) shall be in such form as is prescribed; and
- (b) shall contain provisions satisfactory to the Director for—
 - (i) the maintenance of the child; and
 - (ii) the due payment of wages payable under the contract.

(3) A person who has agreed to pay wages to a ward shall pay—

- (a) to a ward such part of the wages as are agreed to be paid to the ward himself; and
- (b) to the Director, the remaining part (if any) of the wages.

(4) The Director shall hold, on behalf of the ward, any money paid to him under Subsection (3), and apply it in the prescribed manner.

(5) The Director or a person authorized in writing by the Director to act under this section may, in the name of the Director, sue for and recover wages due by a person on account of a ward.

74. COMPLAINTS AGAINST EMPLOYERS OF WARDS.

(1) Where a complaint is made by a person authorized in writing by the Director to make a complaint under this section that a person with whom a ward has been placed under a contract of apprenticeship or employment—

- (a) is not observing or performing a condition that he undertook in the contract to observe or perform; or
- (b) is unfit to have further care of the ward,

a justice may summon the last-mentioned person to answer the complaint.

(2) At the hearing of a complaint under Subsection (1), a Court may—

- (a) order the agreement to be terminated; and

- (b) direct the child to be sent to a place of safety pending arrangements for further employment.

75. TRANSFER OF WARDS WITHIN PAPUA NEW GUINEA AND AUSTRALIA.

(1) Notwithstanding any other law, the Director may send a ward to a place within Papua New Guinea or Australia in order that the child may be there placed under control, trained, educated, cared for and maintained in accordance with arrangements made by the Director.

(2) In exercising the power conferred by Subsection (1), the Director may authorize, in writing, a person to take charge of and convey a ward to a place within Papua New Guinea or Australia.

(3) Where a ward is sent under this section to a place within Papua New Guinea or Australia, the Director may pay to the authority or person under whose control the child is placed an amount, for the maintenance of the child, at such rate per week as the Minister determines.

(4) When a child sent out of Papua New Guinea under this section ceases to be a ward, he is, on application being made within such time and in such manner as is prescribed, entitled to be returned to Papua New Guinea at the expense of the Director.

76. MEDICAL EXAMINATION OF WARDS.

(1) A ward shall not be apprenticed, boarded out or placed out unless he has been—

- (a) examined by a medical practitioner; and
- (b) certified by the medical practitioner—
 - (i) to be free from disease or no longer liable to convey infection; and
 - (ii) to be in a fit condition to be apprenticed, boarded out or placed out.

(2) A medical practitioner who examines a ward under Subsection (1) shall forward a certificate of the result of his examination to the Director, and the Director shall retain the certificate.

77. MEDICAL TREATMENT OF WARDS.

The Director or a person authorized in writing by the Director to act under this section in relation to a particular child on a particular occasion may consent to a surgical or other operation on a ward, notwithstanding the objection of a parent of the child, if the Director or authorized person is advised by a medical practitioner that the operation is necessary in the interests of the health or welfare of the child.

78. OFFENCES IN RELATION TO WARDS.

A person who—

- (a) ill-treats, terrorizes, overworks or injures a ward; or
- (b) counsels or causes, or attempts to cause, a ward—
 - (i) to be withdrawn or to abscond from an institution or from the charge of a person with whom the ward is boarded out, placed out or apprenticed; or
 - (ii) to escape from his proper custody; or
 - (iii) to be or remain absent without leave from his proper custody; or
- (c) knowing a ward to have been so withdrawn, to have so absconded or escaped or to be so absent—
 - (i) harbours or conceals him; or
 - (ii) prevents him from returning to the institution, charge or custody; or
- (d) where he has the care of a ward—
 - (i) illegally discharges or dismisses, or attempts to discharge or dismiss, the ward from an institution; or
 - (ii) illegally detains the ward in an institution; or
 - (iii) neglects the ward; or
 - (iv) fails to observe, perform or keep a covenant, condition or agreement that is contained in a contract that he has entered into respecting the ward and that by the contract he has bound himself or agreed to observe, perform or keep,

is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

PART XI. – EMPLOYMENT OF CHILDREN.

79. ENDANGERING CHILD BY PUBLIC EXHIBITION, ETC.

(1) A person who causes or permits a child to take part in—

- (a) a public exhibition or performance; or
- (b) any preparation, training or rehearsal for a public exhibition or performance,

if by doing so the child would endanger his life or limb, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

(2) A parent or a person having the care of a child who aids or abets a person in the contravention of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

(3) Where—

- (a) a public exhibition or performance, or any preparation, training or rehearsal for a public exhibition or performance, is in its nature dangerous to the life or limb of a child taking part in it; and
- (b) in the course of such an exhibition, performance, preparation, training or rehearsal an accident causes actual bodily harm to a child employed to take part in it,

the employer (whether or not he is a parent of the child) is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

(4) Where an employer guilty of an offence under Subsection (3) is not a parent of the child, the court that convicts him of the offence may order him to pay, as compensation for the bodily harm caused to the child, a sum not exceeding K200.00 to the child or to a person named by the court to receive the payment on behalf of the child.

(5) The recovery of compensation under Subsection (4) does not deprive a child of any other legal remedy, but a sum so awarded shall be taken into account in any other proceedings by or on behalf of the child for or in respect of the same bodily harm.

80. STREET TRADING.

(1) A child who engages in street trading—

- (a) between 8 p.m. and 6 a.m.; or
- (b) at any time on a Sunday,

is guilty of an offence.

Penalty: A fine not exceeding K1.00.

(2) A person who causes or procures a child to engage in street trading—

(a) between 8 p.m. and 6 a.m.; or

(b) at any time on a Sunday,

is guilty of an offence.

Penalty: a fine not exceeding K60.00 or imprisonment for a term not exceeding two months, or both.

PART XII. – LICENSING OF CHILD-MINDING AND CHILD CARE CENTRES, ETC.

81. INTERPRETATION OF PART XII.

In this Part, unless the contrary intention appears–

“**licence**” means a licence under Section 83;

“**licensed centre**” means a place that is the subject of a licence.

82. APPLICATION OF PART XII.

(1) This Part does not apply–

(a) to a hospital licensed under Section 124 of the *Medical Registration Act 1980*; or

(b) to any case where the person having the care of a child is–

(i) a relation by blood of the child; or

(ii) a person to whom the custody of the child has been given by a court or by a deed or will; or

(iii) a person in whose care the child has been placed under this Act.

(2) Sections 84, 88, 89, 90, 91 and 92 do not apply to or in respect of day nurseries and kindergartens.

83. LICENSING OF CENTRES.

(1) The person in charge of a place established or used–

(a) for the reception and care of a child or children, under the age of seven years, apart from his or their mother or other parent; or

(b) for the purpose of conducting a day nursery or kindergarten,

may apply to the Director in the prescribed form and manner for a licence in respect of the place.

(2) The Director shall ensure that an inquiry is made respecting an application under Subsection (1) and a report furnished by a person authorized by the Director for the purpose.

(3) On receiving a report under Subsection (2), the Director may grant or refuse the licence.

(4) A licence shall be–

(a) in the prescribed form; and

(b) subject to such conditions and requirements as are prescribed or as the Director in any particular case thinks proper.

(5) A licence remains in force until cancelled by order of a Court, but any provision of the licence relating to the maximum number of children who may—

- (a) be received and cared for; or
- (b) attend the day nursery or kindergarten,

may be varied by the Director.

(6) Particulars of a variation under Subsection (5) shall be endorsed on the licence.

84. REGISTERS TO BE KEPT IN CENTRES.

(1) Subject to Section 82(2), the person in charge of a licensed centre must keep a register in the prescribed form in which he must immediately enter—

- (a) the name, sex and age of each child received into his care or charge; and
- (b) the date when the child was received; and
- (c) such other particulars as are prescribed.

(2) A register kept under Subsection (1) must be produced by the person in charge at all reasonable times on demand by the Director or an officer authorized by the Director for the purpose, and may be examined and, if the Director or officer making the demand thinks fit, copies of entries in it may be made.

(3) Immediately after the removal of a child from a licensed centre, whether before or on attaining the age of seven years, the person in charge must—

- (a) enter in the register kept under this section—
 - (i) the time of the removal; and
 - (ii) the name and address and calling or occupation of the person to whom the child is delivered; and
 - (iii) if the person to whom the child is delivered is a married woman, the address and calling of her husband; and
- (b) forward notice of the removal to the Director.

(4) A person who fails to comply with a provision of this section is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months.

85. INSPECTION OF CENTRES.

(1) For the purpose of—

- (a) the making of an inquiry and report under Section 83 respecting a place; or
- (b) ensuring that the prescribed conditions and requirements are complied with in respect of a licensed centre,

a welfare officer may at any time, enter the place or centre and inspect it and the children who are inmates of it, and the person in charge of the place or centre shall afford all reasonable facilities for the inspection.

(2) In making an inspection the welfare officer may, if he thinks fit, be accompanied by a medical practitioner or a commissioned officer of the Police Force, or by both.

(3) The Director may, by writing under his hand, order that this section does not apply in any case where he is satisfied that its application is unnecessary.

86. NON-COMPLIANCE WITH CONDITIONS OF LICENCE, ETC.

(1) Where, on an inspection of a licensed centre, it appears that a condition or requirement of the licence or of this Act is not complied with, the Director may give written directions to the person in charge to ensure compliance with the condition or requirement, failing which the licence may be cancelled by a Court.

(2) The person in charge of a licensed centre who fails to comply with a direction under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

(3) Where a person is convicted of an offence under Subsection (2), the Court that convicts him may cancel the licence.

(4) On the cancellation of the licence, a Court may direct that a child who is an inmate of the place the subject of the licence—

- (a) be restored to the custody of a parent; or
- (b) be released to the care of the Director to be dealt with as a ward; or
- (c) be released to the care of some other person.

87. CONDUCTING OF UNLICENSED CENTRE.

(1) The person in charge of a place referred to in Section 83(1) that is not licensed under that section is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding three months, or both.

(2) Where a person is convicted of an offence against Subsection (1) in respect of a place that is of the nature referred to in Section 83(1)(a), any child who is an inmate of the place may be removed from it and taken to a place of safety.

(3) Where a child is removed to a place of safety under Subsection (2), he shall remain there until a Court orders that he—

- (a) be restored to the custody of his parent; or
- (b) be released to the care of the Director to be dealt with as a ward; or
- (c) be released to the care of some other person.

88. REGULATION OF CHILD-MINDING FOR PROFIT.

(1) Subject to Section 82(2), a person who, without a written order of a Court specifying the terms on which the child may be received, receives, or agrees to receive, into his care a child under the age of seven years to rear, nurse, or otherwise maintain apart from his mother or other parent, in consideration of the payment to him of any sum of money or other valuable consideration otherwise than by way of periodical instalments and in accordance with this section is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months, or both.

(2) An instalment referred to in Subsection (1) shall not be paid for more than four weeks in advance.

(3) The Clerk of a Court that makes an order under this section shall immediately forward a copy of the order to the Director.

(4) This section does not apply to—

(a) the manager or officers of an institution supported wholly or in part by public subscription or by private charity which—

- (i) is open to inspection by the Government; or
- (ii) controlled by the Government; or

(b) a person exempted from the operation of this section by the Director.

(5) If required, the Director shall receive from a person wishing to place a child under the age of seven years in the care of the person in charge of a licensed centre a sum of money from which he shall make to that last-mentioned person such payments as are agreed on.

89. REGISTRATION OF RECEPTION OF CHILDREN.

Subject to Section 82(2), a person who receives into his care in a licensed centre a child under the age of seven years to rear, nurse, or otherwise maintain for payment must within seven days register, or cause to be registered, with the Director the prescribed particulars in the prescribed form.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months

90. NOTIFICATION OF CHANGE OF ADDRESS OR RELINQUISHMENT OF CHILD.

Subject to Section 82(2), where the person in charge of a licensed centre changes his place of abode, or relinquishes the care of a child in the centre, and does not immediately forward a notice of the change or relinquishment to the Director in the prescribed form, he is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months.

91. NOTICE OF DEATH OF CHILD.

(1) Subject to Section 82(2), the person in charge of a licensed centre must, immediately after the death in the centre of a child to whom Section 89 applies, give notice of the death to the officer-in-charge at the nearest police station and the Director.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months.

(2) An officer-in-charge of police to whom notice of death is given under Subsection (1) shall make inquiry and report to the coroner or, if the exigencies of the case so require, to a justice, whether an inquiry respecting the cause of death is necessary.

92. FORM, SERVICE, ETC., OF NOTICES, ETC., TO DIRECTOR.

Subject to Section 82(2), where, by the provisions of this Part, a person is required to forward a notice to, or to effect a registration of particulars with, the Director, the notice or particulars of registration shall—

- (a) be in writing; and
- (b) unless delivered personally by that person, be forwarded by registered post.

PART XIII. – RECIPROCAL ARRANGEMENTS.

93. ARRANGEMENTS WITH AUSTRALIA AS TO CARE, ETC., OF CHILDREN.

(1) In this section, “**ward**” includes a child of whom the Director is the guardian under Section 23 of the *Adoption of Children Act 1968*.

(2) The Minister may, by arrangement or agreement from time to time with the responsible Minister or some other authorized person of a State or Territory of Australia, commit into the care of the Director a child who is under the law of that State or Territory committed into the care of that Minister or other person, or of whom that Minister or other person is, under that law, the guardian, and who is brought to, or resorting to, Papua New Guinea, as though the child were one to whom the provisions of Section 41(2) applies, and thereupon that section applies accordingly.

(3) Where the Minister is satisfied that a State or Territory of Australia has enacted a provision substantially similar to Subsection (1), he may, by arrangement or agreement with the responsible Minister or some other authorized person of that State or Territory, procure the committal to the care of that Minister or officer or to a Department of the State or Territory (as appropriate), of a ward taken to, or resorting to, that State or Territory.

PART XIV. – OFFENCES GENERALLY IN RELATION TO CHILD WELFARE.

94. FAILURE TO PROVIDE FOOD, ETC.

A person (whether or not he is the parent of the child) who, without reasonable excuse, fails to provide adequate and proper food, clothing, lodging, nursing aid and medical aid for a child in his care, is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding 12 months, or both.

95. ILL-TREATING CHILDREN.

(1) Subject to Section 109, a person who—

(a) assaults, ill-treats or exposes a child; or

(b) causes or procures a child to be assaulted, ill-treated or exposed,

is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding three months, or both.

(2) Subject to Section 109, a person who—

(a) assaults, ill-treats or exposes a child; or

(b) causes or procures a child to be assaulted, ill-treated or exposed,

in such a manner that the assault, ill-treatment or exposure has resulted or appears likely to result in bodily suffering or permanent or serious injury to the health of the child is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding 12 months, or both.

(3) The same complaint may charge a person—

(a) with all or any of the offences of assault, ill-treatment or exposure of the child, together or separately; and

(b) with committing all or any of those offences in such a manner that bodily suffering or permanent or serious injury to the health of the child has resulted, or appears likely to result,

alternatively or together, but if two or more of those offences are charged together the person charged is not liable to a separate penalty for each.

96. DETENTION OF CERTAIN CHILDREN IN PLACES OF SAFETY.

(1) Where a commissioned officer of the Police Force or a person authorized in writing by the Director to act under this section believes on reasonable grounds that an offence has been committed in respect of a child, he may take the child to a place of safety.

(2) A child who—

- (a) is taken to a place of safety under Subsection (1); or
- (b) seeks a refuge in a place of safety,

may be detained in the place of safety until he can be brought before a Court or until a period of seven days has elapsed, whichever first occurs.

97. CARE OF CHILD PENDING DEALING WITH OFFENCES IN RELATION TO HIM.

(1) Where a Court or magistrate is of the opinion that—

- (a) an offence has been committed in respect of a child brought before the Court or magistrate; and
- (b) the health, welfare or safety of the child is likely to be endangered unless an order is made under this section,

the Court or magistrate may, without prejudice to any other power under this Act, make such order as the Court or magistrate thinks proper for the care of the child for a reasonable period.

(2) The period specified in Subsection (1) shall not exceed the period reasonably required for bringing and disposing of a charge in respect of the offence considered to have been committed.

(3) An order under this section may be enforced notwithstanding the claim of any person to be entitled to the custody of the child.

98. CARE OF CHILD ON DETERMINATION OF CHARGES FOR OFFENCES IN RELATION TO HIM.

Where steps have been taken under this Act to secure the safety or well-being of a child and a charge against a person for an offence in respect of the child has been heard and determined, the court before which the charge is brought may, at any time, make any order that it thinks proper for the care of the child.

PART XV. – MISCELLANEOUS.

Division 1.

Maintenance Orders.

99. COLLECTION OF MONEYS DUE TO DIRECTOR.

(1) Where a sum of money is due under a maintenance order to the Director, a commissioned officer of the Police Force authorized in writing by the Commissioner of Police to do so may, subject to the order, demand, collect and receive the sum from the person liable to pay it.

(2) The receipt of a Receiver of Public Moneys is a sufficient discharge for money paid under Subsection (1).

100. VARIATION, ETC., OF MAINTENANCE ORDERS.

(1) Where a maintenance order is in force under this Act–

- (a) the Director; or
- (b) the mother of the child in respect of whom the order is in force; or
- (c) a person liable to pay money under the order,

may apply to a Court for the alteration, variation, suspension or discharge of the order.

(2) An application under Subsection (1) shall be by way of complaint–

- (a) in writing; and
- (b) on oath; and
- (c) stating the names of the complainant, the child and all persons liable to pay for or contribute towards the maintenance of the child.

(3) A justice before whom a complaint is made under this section may summon all or any of the persons stated in the complaint to be liable to pay for or contribute towards the maintenance of the child to appear before a Court at a time and place named in the summons.

(4) A complaint under this section may be heard by–

- (a) the Court which made the original order; or
- (b) the Court nearest to the place of residence of a person liable to make payments under the order, if that Court is satisfied that increased convenience would result to the parties by its hearing the complaint.

(5) At the hearing of a complaint under this section the Court may alter, vary, suspend or discharge the order or make a new order as it thinks just in the light of fresh evidence adduced.

101. ENFORCEMENT OF MAINTENANCE ORDERS.

(1) Where—

- (a) an order for the past or future maintenance of a child has been made under this Act; and
- (b) default has been made by the defendant in making the payments directed by the order; and
- (c) an amount of more than K20.00 is due under the order,

the Director or a person authorized in writing by the Director to do so may apply to a Court for a certificate as to the amount due under the order at the date of the certificate.

(2) Where, after hearing the application, the Court is satisfied as to the matters specified in Subsection (1)(a), (b) and (c), the Court may grant the certificate.

(3) The Director may file the certificate or cause it to be filed in a District Court.

(4) Where a certificate has been filed in a District Court under Subsection (3), the Court shall enter judgement for the person to whom the defendant is ordered to make payments under the order for maintenance for—

- (a) the amount stated to be due in the certificate; and
- (b) the fees paid for the certificate and for filing the certificate and entering judgement.

(5) A judgement entered under Subsection (4) may be enforced in any manner in which a final judgement in civil proceedings may be enforced in a District Court.

Division 2.

Miscellaneous Penal Provisions.

102. FALSE EVIDENCE BY CHILD.

(1) In a prosecution for an offence or any other proceedings under this Act, a child who knowingly gives false unsworn evidence or makes a false statement is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

(2) A Court finding a child guilty of an offence under this section may make such order as it might make if it had declared the child to be a destitute or neglected child under this Act, and an order so made shall have effect as if it were an order under Section 41.

(3) A prosecution shall not be instituted for an offence under this section without the leave of the Court in which the unsworn evidence was received.

103. FALSE STATEMENTS AS TO PROPERTY, ETC.

A person who, in an application under this Act, makes a wilfully false statement as to—

- (a) his property or income; or
- (b) the income, property or earnings of a member of his family,

is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding three months, or both.

104. OBTAINING BENEFITS IMPROPERLY.

(1) A person who makes orally or in writing a false or misleading statement to obtain or increase a benefit or remove or decrease a liability under this Act, whether for himself or for any other person, is guilty of an offence.

(2) A person who receives and retains any money purporting to be paid in respect of a child under the provisions of this Act after the person has become disentitled to receive it is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding three months, or both.

105. DEFENCE OF REASONABLE EXCUSE.

It is a defence to a charge of an offence against this Act if the person charged satisfies the court that he had a reasonable excuse for the act or omission that constitutes the offence charged.

106. ALLEGATION AS TO AGE OF CHILD.

Where—

- (a) a person is charged with an offence against this Act in respect of a child alleged in the charge to be under a specified age; and
- (b) the child appears to the court to be under that age,

the child unless the contrary is proved, shall be deemed to be under that age.

107. EVIDENCE OF CHILD TOO ILL TO ATTEND COURT.

(1) Where a magistrate is satisfied by the evidence of a medical practitioner that the attendance before a court of a child in respect of whom an offence under this Act is alleged to have been committed would be injurious or dangerous to the health of the child, the magistrate may take the written statement of the child.

(2) Where, in any proceedings in relation to an offence under this Act, a court is satisfied by the evidence of a medical practitioner that the attendance before the court of a child in respect of whom the offence is alleged to have been committed

would be injurious or dangerous to the health of the child, a deposition of the child or a statement taken under Subsection (1) may be received in evidence, and has effect as if it were proved that—

- (a) the child was so ill as not to be able to travel; or
- (b) in the case of a statement—there was no reasonable probability that the child would ever be able to travel or give evidence.

(3) Notwithstanding Subsection (2), a deposition or statement of a child shall not be received in evidence unless the court is of the opinion that the child—

- (a) is possessed of sufficient intelligence to justify the reception of the deposition or statement; and
- (b) understands the duty of speaking the truth.

(4) Where, in any proceedings in relation to an offence against this Act, a court is satisfied by the evidence of a medical practitioner that—

- (a) the attendance for the purpose of giving evidence before the court of a child in respect of whom the offence is alleged to have been committed would be injurious or dangerous to the health of the child; and
- (b) 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.

108. ARREST WITHOUT WARRANT.

(1) A commissioned officer of the Police Force may arrest without warrant a person who commits, or whom the officer reasonably suspects of having committed, an offence against this Act, if the name and residence of the person are not known to and cannot by reasonable inquiry be ascertained by the officer.

(2) Where an arrest has been made under Subsection (1), unless the officer-in-charge of the police station to which the person arrested is taken believes that the release on bail of the person arrested—

- (a) would tend to defeat the ends of justice; or
- (b) where the offence is alleged to have been committed in respect of a child—would tend to cause injury or danger to the child,

he shall release the person arrested on his entering into a recognizance, with or without sureties, to attend on the hearing of the charge.

Division 3.

General.

109. PUNISHMENT OF CHILDREN.

(1) Subject to this section, this Act does not take away or affect the right of a parent, teacher or other person having the lawful care of a child to administer punishment to the child.

(2) The Director may authorize the superintendent of an institution to administer corporal punishment or cause it to be administered to a ward who is in the institution.

(3) Subject to such conditions relating to the administration of corporal punishment as are prescribed, but not otherwise, a superintendent authorized under Subsection (2) may administer corporal punishment or cause it to be administered to a ward who is in an institution of which he is the superintendent.

110. APPEARANCE, ETC., BY DIRECTOR.

The Director or an officer authorized in writing by the Director to act for him under this section is entitled to appear and be heard at the hearing of—

- (a) a complaint, information, application or proceeding under this Act against or in respect of a child; or
- (b) an appeal in respect of any such matter.

111. WARRANTS TO SEARCH IN RESPECT OF OFFENCES.

(1) Where it appears to a magistrate, on complaint made before him on oath, that there is reason to believe that, in a house, building, vessel, vehicle or place—

- (a) a person is offending against a provision of this Act, or
- (b) a provision of this Act is being infringed,

he may issue a warrant authorizing a welfare officer or a commissioned officer of the Police Force named in the warrant to enter and search at any hour of the day or night, if needs be by force, a house, building, vessel, vehicle or place specified in the warrant, for the purpose of ascertaining whether there is or has been, in or on the house, building, vessel, vehicle or place, an offence against or infringement of the provisions of this Act.

(2) The welfare officer or officer of the Police Force named in a warrant issued under Subsection (1) may be accompanied by—

- (a) a medical practitioner; and
- (b) unless the magistrate otherwise directs, the person making the complaint, if he desires to accompany the welfare officer or officer of the Police Force.

112. WARRANTS TO SEARCH AND ARREST IN RELATION TO SAFETY OF CHILDREN.

(1) Where it appears to a magistrate, on complaint made before him on oath by a person who, in the opinion of the magistrate, is acting in good faith in the interests of a child, that there is reasonable cause to suspect that the child—

- (a) is a neglected child; or
- (b) has been or is being ill-treated or neglected in a manner likely to cause him unnecessary suffering or to be injurious to his health or welfare,

the magistrate may issue a warrant authorizing a welfare officer or a commissioned officer of the Police Force named in the warrant—

- (c) to search for the child and take him to, and detain him in, a place of safety until he can be brought before a Court; and
- (d) to apprehend any person whom the welfare officer or officer of the Police Force believes, on reasonable grounds, to have committed an offence in respect of the child.

(2) A person authorized by warrant under Subsection (1) to search for a child and take him to and detain him in a place of safety may—

- (a) enter, if needs be by force, any house, building, vessel, vehicle or other place specified in the warrant and;
- (b) remove the child from that house, building, vessel, vehicle or place.

(3) A warrant issued under this section shall be addressed to and executed by the welfare officer or officer of the Police Force named in the warrant.

(4) A welfare officer or officer of the Police Force executing a warrant under this section may be accompanied by—

- (a) a medical practitioner; and
- (b) unless the magistrate otherwise directs, the person making the complaint, if he desires to accompany the welfare officer or officer of the Police Force.

(5) It is not necessary to name a particular child in a warrant issued under this section.

(6) Where a child is brought before a Court by virtue of a warrant under this section, the Court may—

- (a) commit the child to the care of a person named by the Court; or
- (b) make such other order as to the care of the child as the Court thinks fit.

113. INDEMNITY.

(1) No civil proceedings may be commenced against the Director or an officer for or on account of an act, matter or thing done by him, or under his direction, and

purporting to be done for the purpose of carrying out the provisions of this Act if the Director or officer acted in good faith and with reasonable care.

(2) No civil proceedings referred to in Subsection (1) may be commenced more than six months after—

- (a) the time when the alleged cause of action arose; or
- (b) the person aggrieved by the act, matter or thing ceased absolutely to be a ward,

whichever last occurs.

(3) Where, pending civil proceedings against the Director or an officer for or on account of an act, matter or thing done by him or under his direction and purporting to be done for the purpose of carrying out the provisions of this Act—

- (a) application to stay the proceedings is made to the court in which the proceedings are pending or were commenced; and
- (b) the court is satisfied that—
 - (i) there is no reasonable ground for alleging want of good faith or reasonable care; or
 - (ii) the suit or action was commenced out of time,

the court may stay the proceedings in the suit or action on such terms as to costs or otherwise as the court thinks proper.

114. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing penalties of fines not exceeding K100.00 for offences against the regulations.

Office of Legislative Counsel, PNG