

AUSTRALIAN CAPITAL TERRITORY

Children's Services (Amendment) Ordinance (No. 2) 1987

No. 53 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 13 September 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

JOHN BROWN
Minister of State for the Arts, Sport, the
Environment, Tourism and Territories

An Ordinance to amend the *Children's Services Ordinance 1986*

Short title

1. This Ordinance may be cited as the *Children's Services (Amendment) Ordinance (No. 2) 1987*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Children's Services Ordinance 1986*.²

Interpretation

3. Section 4 of the Principal Ordinance is amended by omitting from subsection (1) the definition of "agreement" and substituting the following definition:

" 'agreement' means an agreement entered into under section 176;"

Youth Advocate

4. Section 9 of the Principal Ordinance is amended:

(a) by omitting paragraph (2) (b) and substituting the following paragraph:

"(b) such other functions as are prescribed."; and

(b) by adding at the end the following subsections:

"(6) The Youth Advocate may resign his or her office by writing signed by him or her and delivered to the Minister.

"(7) The Youth Advocate shall be paid such remuneration and allowances as are prescribed.

"(8) Subsection (7) does not apply in relation to:

(a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Youth Advocate; or

(b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the Youth Advocate.

"(9) In subsection (8), 'determination' means a determination of the Remuneration Tribunal."

Childrens Services Council

5. Section 13 of the Principal Ordinance is amended by omitting subsection (12) and substituting the following subsection:

"(12) If a member of the Council other than a member referred to in paragraph (2) (a), (b) or (c) is unable to attend a meeting of the Council, the person or body nominating or appointing him or her, as the case may be, may appoint another person to attend in the member's place and the person so appointed may attend and vote and shall be taken into account in determining a quorum."

Determination of criminal jurisdiction by reference to age

6. Section 24 of the Principal Ordinance is amended by adding at the end of subsection (3) "unless, in the circumstances of the case, the Court considers it appropriate for the person to be dealt with as a child".

Interviewing of children

7. Section 30 of the Principal Ordinance is amended by inserting in paragraphs (2) (a) and (b) ", on reasonable grounds," after "believes".

Limitations in respect of criminal proceedings against children

8. Section 33 of the Principal Ordinance is amended by omitting from subsection (7) "and in any case within 48 hours after the child was placed under restraint".

Charge against child—informing of parent

9. Section 35 of the Principal Ordinance is amended by inserting ", of the child's location" after "of the charge".

Identifying material

10. Section 36 of the Principal Ordinance is amended:

(a) by inserting after subsection (2) the following subsection:

"(2A) Identifying material that consists of material from the body of a child shall not be taken pursuant to this section otherwise than by a person who is a medical practitioner."; and

(b) by adding at the end the following subsection:

"(6) Where identifying material of a child is taken pursuant to this section, the authorised officer or police officer referred to in subsection (2) shall as soon as practicable take all reasonable steps to cause a parent of the child to be notified of the action taken in relation to the child."

Criteria for bail

11. Section 37 of the Principal Ordinance is amended:

(a) by omitting paragraph (1) (b) and substituting the following paragraph:

"(b) where the child has not been admitted to bail—by the Court when the child comes before the Court in connection with the offence.";

(b) by inserting after subsection (1) the following subsections:

"(1A) Where the police officer determines that a child should not be admitted to bail, the police officer shall:

- (a) record his or her reasons in writing; and
- (b) forward them to the authorised officer who gave his or her consent under subsection 33 (1).

"(1B) The authorised officer shall review the decision of the police officer and:

- (a) where the authorised officer confirms the decision not to admit the child to bail, the authorised officer shall record his or her reasons in writing; or
- (b) where the authorised officer determines the child should be admitted to bail:
 - (i) the authorised officer shall notify the police officer; and
 - (ii) the police officer shall admit the child to bail."; and
- (c) by omitting from subsection (3) "determines that a child should be admitted" and substituting "admits a child".

Arrested children: bringing before Court

12. Section 39 of the Principal Ordinance is amended by omitting from subsection (1) "and in any case within 48 hours after the arrest".

Probation orders: entry and inspection by supervisor

13. Section 56 of the Principal Ordinance is amended by omitting from subsection (3) "he or she thinks necessary and if necessary by such force as is reasonable" and substituting "is necessary and reasonable and by such force as is necessary and reasonable".

Placing in shelter etc.

14. Section 65 of the Principal Ordinance is amended:

- (a) by inserting in subsection (1) "an institution or" before "a State";
- (b) by inserting in subsection (3) "an institution or" before "a State"; and
- (c) by omitting paragraphs (3) (b) and (c) and substituting the following paragraphs:

"(b) take the child to the institution or the State institution;

- (c) in the case of a child committed to a State institution—take the child to the State or Territory specified in the order for the purposes of detention in the State institution."

Where person apparently a child

15. Section 72 of the Principal Ordinance is amended by inserting in paragraph (a) ", on reasonable grounds," after "appears".

Proceedings with respect to children in need of care

16. Section 73 of the Principal Ordinance is amended:

- (a) by inserting in subsection (1) ", on reasonable grounds," after "appears";
- (b) by omitting from subsection (3) "is reasonably"; and
- (c) by omitting from subsection (5) "is reasonably".

Children in hospital

17. Section 74 of the Principal Ordinance is amended:

- (a) by inserting in subsection (1) ", on reasonable grounds," after "appears";
- (b) by omitting from subsection (3) "is reasonably"; and
- (c) by omitting from subsection (5) "is reasonably".

Direction for release of child

18. Section 75 of the Principal Ordinance is amended:

- (a) by inserting after subsection (2) the following subsection:

"(2A) At any time after a child has been taken into custody under section 73 or detained under section 74, a parent of the child, or other person having custody of the child, may apply to a magistrate for a direction that the child be released.";
- (b) by inserting in subsection (5) "(whether pursuant to subsection (2A) or otherwise)" after "to be heard";
- (c) by inserting in subsection (5) "and the Youth Advocate" after "or person"; and
- (d) by omitting from subsection (6) "is reasonably".

Residential orders and supervision orders: entry and inspection by Director etc.

19. Section 85 of the Principal Ordinance is amended by omitting from subsection (3) "he or she thinks necessary and if necessary by such force as is reasonable" and substituting "is necessary and reasonable and by such force as is necessary and reasonable".

Religion

20. Section 111 of the Principal Ordinance is amended by adding at the end the following subsections:

"(3) A parent or former guardian of a ward who is dissatisfied with a decision of the Director under subsection (1) with respect to the ward may appeal to the Court against the decision.

"(4) The Director shall be the respondent to the appeal."

Visits to wards

21. Section 112 of the Principal Ordinance is amended by omitting from subsection (3) "instrument of his or her appointment as an officer" and substituting "identity card issued to the officer under subsection 11 (2)".

Wards running away

22. Section 113 of the Principal Ordinance is amended:

- (a) by omitting from subsection (2) "for the purpose" and substituting "and reasonable"; and
- (b) by omitting from subsection (3) "for the purpose" and substituting "and reasonable".

Removal of child from unlicensed care

23. Section 124 of the Principal Ordinance is amended:

- (a) by omitting from subsection (2) "A direction under paragraph (1) (a) may be given" and substituting "A request under paragraph (1) (a) may be made"; and
- (b) by inserting after subsection (2) the following subsection:

"(2A) Before removing a child from premises, the Director or officer shall notify in writing the person providing care for the child and, where practicable, a parent of the child of the proposed removal of the child."

Neglect etc., of children

24. Section 139 of the Principal Ordinance is amended by inserting in subsection (3) "and reasonable" after "necessary" (second occurring).

Jurisdiction of Supreme Court

25. Section 144 of the Principal Ordinance is amended by inserting in paragraph (1) (c) "111," after "68,".

Review by Administrative Appeals Tribunal

26. Section 148 of the Principal Ordinance is amended:

- (a) by omitting paragraphs (1) (c) and (d) and substituting the following paragraphs:

- "(c) varying or revoking a condition under subsection 122 (2), 123 (1) or 123 (4);

- (d) including a condition in a licence under subsection 123 (4); or

- (e) cancelling or suspending a licence under section 123."; and

- (b) by adding at the end of paragraph (2) (a) "or subsection 99 (2)".

Search warrants

27. Section 151 of the Principal Ordinance is amended by omitting from subsection (1) "reasonably necessary and such force as is reasonably necessary" and substituting "necessary and reasonable and such force as is necessary and reasonable".

Notification of decisions

28. Section 155 of the Principal Ordinance is amended:

- (a) by inserting in subsection (1) "the Minister or" before "the Director"; and

- (b) by inserting in subsection (2) "the Minister or" before "the Director".

Ministerial agreements

29. Section 176 of the Principal Ordinance is amended by adding at the end the following subsection:

"(2) The Minister shall cause a copy of each agreement entered into under this section to be tabled in each House of the Parliament within 15 sitting days of the date of the agreement."

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 16 September 1987.
2. No. 13, 1986 as amended by No. 28, 1987.