

AUSTRALIAN CAPITAL TERRITORY

No. 8 of 1979

An Ordinance to amend the *Child Welfare Ordinance* 1957

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 this fifth day of April 1979.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

R. ELLICOTT
Minister of State for the Capital Territory

CHILD WELFARE (AMENDMENT) ORDINANCE 1979

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| Short title | 1. This Ordinance may be cited as the <i>Child Welfare (Amendment) Ordinance</i> 1979. ¹ |
| Principal Ordinance | 2. In this Ordinance, "Principal Ordinance" means the <i>Child Welfare Ordinance</i> 1957. ² |
| Interpretation | <p>3. Section 5 of the Principal Ordinance is amended—</p> <p>(a) by omitting the definitions of "admit to government control", "adopted boarder" and "board out";</p> <p>(b) by inserting after the definition of "child" the following definition:</p> <p style="padding-left: 40px;">" 'Department' means the Department of State administered by the Minister of State for the time being administering the provisions of this Ordinance other than Part III;";</p> <p style="padding-left: 40px;">and</p> <p>(c) by omitting the definitions of "foster parent", "place out" and "the Department".</p> |
| Repeal | 4. Section 6 of the Principal Ordinance is repealed. |

5. Section 18 of the Principal Ordinance is repealed and the following section substituted:

“18. The Minister shall admit a child or young person to government control if— Admission to government control

- (a) a court has committed the child or young person to the care of the Minister, or has released the child or young person to the custody of the Minister, to be dealt with as a ward admitted to government control; or
- (b) the Minister is satisfied that it is necessary in the interests of the child or young person so to do and, where the child or young person is in the custody of a parent, the parent has requested or consented to, the admission of the child or young person to government control.”

6. Sections 20, 21, 22 and 23 of the Principal Ordinance are repealed and the following sections substituted:

“20. Subject to this Ordinance, the Minister has the care of the person of a ward other than— Care of person of ward

- (a) a ward for whom accommodation and maintenance is being provided in pursuance of an arrangement made under sub-section 21 (1); and
- (b) a ward who is an inmate of an institution.

“21. (1) The Minister shall provide, or arrange for the provision of, accommodation and maintenance for a child or young person admitted to government control. Maintenance and accommodation of wards

“(2) A person who, in pursuance of an arrangement under sub-section (1), provides accommodation and maintenance for a child or young person admitted to government control is entitled to receive from the Commonwealth payments at such rate as is from time to time fixed by the Minister.

“(3) The Minister may, at any time, determine an arrangement under sub-section (1) for the provision of accommodation and maintenance for a child or young person admitted to government control.”

7. Sections 25 and 26 of the Principal Ordinance are repealed and the following sections substituted:

“25. (1) Subject to sub-section (2), the Minister shall not arrange for the provision of accommodation and maintenance for a ward by a person of a religious faith different from that of the clergymen under whose guidance and control the ward has been placed in pursuance of section 24. Religious faith of person with whom ward to be placed

“(2) Where, for any reason, it is not practicable to arrange for the provision of accommodation and maintenance for a ward by a person of the same religious faith as the clergymen referred to in sub-section (1), an arrangement shall not be made under sub-section 21 (1) unless the person with whom the arrangement is made gives to the Minister an undertaking in writing that he will not impede or hinder the religious teaching of the ward by those clergymen.

Discharge of
wardship

“26. (1) In this section, ‘relative’, in relation to a child or young person, means—

- (a) a grandparent of the child or young person, whether the relationship is a blood relationship, or is, or is dependent upon, an adoptive relationship;
- (b) a brother or sister of the child or young person, whether the relationship is of the whole blood or the half-blood and whether or not the relationship is adoptive; or
- (c) an aunt or uncle of the child or young person, whether the relationship is a blood relationship or is traced through marriage or an adoptive relationship.

“(2) The Minister may, at any time, revoke the admission of a child or young person to government control.

“(3) Subject to this section, where—

- (a) a child or young person has been admitted to government control;
- (b) a period not less than 12 months has elapsed since the child or young person was so admitted;
- (c) a parent or relative of the child or young person has, by notice in writing given to the Minister, requested the Minister to revoke the admission of the child or young person to government control; and
- (d) either—
 - (i) the Minister has given to that parent or relative notice in writing that he is not willing to revoke the admission of the child or young person to government control; or
 - (ii) the Minister has not, within 3 months after a request was made to the Minister for the purpose of paragraph (c), given to that parent or relative notice in writing stating whether he is willing to revoke the admission of the child or young person to government control,

the Supreme Court may, on application made in accordance with this section and if it is satisfied that the circumstances so warrant, revoke the admission of the child or young person to government control.

“(4) An application under sub-section (3) may be made—

- (a) by the child or young person to whom the application relates;
- (b) by a parent of that child or young person; or
- (c) by a person to whom the Supreme Court has granted leave to make an application under this section.

“(5) The Supreme Court shall not grant to a person leave to make an application under sub-section (3) unless—

- (a) the person is a relative of the child or young person to whom the application relates; and
- (b) the Supreme Court is satisfied that the person has a sufficient interest in the welfare of the child or young person to justify the grant of leave.

“(6) The Minister shall be the respondent to an application under sub-section (3).

“(7) Where the Supreme Court revokes the admission of a child or young person to government control, the Court may make such orders as the Court thinks proper with respect to—

- (a) the custody, guardianship and upbringing of the child or young person; and
- (b) access by any person to the child or young person.

“(8) In proceedings under this section, the Supreme Court shall regard the interests of the child or young person concerned as the paramount consideration.

“(9) Where the Supreme Court revokes the admission of a child or young person to government control, the Minister shall cause the child or young person to be delivered—

- (a) where the Court has made an order under sub-section (7) with respect to the custody of the child or young person—to the person to whom the custody of the child or young person is given by that order; and
- (b) where the Court has not made such an order—to a parent or guardian of the child or young person.

“(10) Where, on an application under this section, the Supreme Court declines to make an order under sub-section (3), an application may not be made under this section in respect of the same child or young person within the period of 12 months commencing on the date on which the first-mentioned application was made, except with the leave of the Supreme Court.

“(11) The Supreme Court shall not give leave for the purpose of sub-section (10) unless it is satisfied that, by reason of special circumstances, it is desirable that an application be made for an order under sub-section (3).”.

Visit by officer	<p>8. Section 27 of the Principal Ordinance is amended by omitting sub-section (2) and substituting the following sub-section:</p> <p>“(2) A person by whom accommodation and maintenance are being provided for a ward in pursuance of an arrangement under sub-section 21 (1) shall permit an officer to interview the ward apart from the person and to make such inspections and examinations as the officer considers necessary.”.</p>
Neglect and ill-treatment of wards	<p>9. Section 98 of the Principal Ordinance is amended by omitting paragraphs (2) (b), (2) (c) and (2) (d) and substituting the following paragraphs:</p> <p>“(b) cause a ward to be withdrawn from his proper custody;</p> <p>(c) without lawful authority—</p> <p>(i) cause a ward to be withdrawn from the care of a person who, in pursuance of an arrangement made under sub-section 21 (1), is providing accommodation for the ward;</p> <p>or</p> <p>(ii) prevent a ward returning to the care of such a person;</p> <p>(ca) prevent a ward returning to his proper custody; or</p> <p>(d) neglect a ward of whom he has the care.”.</p>
Averments	<p>10. Section 107 of the Principal Ordinance is amended—</p> <p>(a) by adding at the end of paragraph (b) the word “or”; and</p> <p>(b) by omitting paragraph (c).</p>
Repeal	<p>11. Sections 113 and 123 of the Principal Ordinance are repealed.</p>
Saving and transitional provisions	<p>12. (1) In this section—</p> <p>“delegate” means a person to whom the Minister has delegated any of his powers and functions under the Principal Ordinance;</p> <p>“Minister” means—</p> <p>(a) in relation to anything done before 19 December 1972—the Minister of State for the Interior; and</p> <p>(b) in relation to anything done on or after 19 December 1972—the Minister of State for the Capital Territory.</p> <p>(2) Where, at any time before the commencement of this Ordinance—</p> <p>(a) the Minister or a delegate has purported to admit a child or young person to government control in pursuance of section 18 of the Principal Ordinance; and</p> <p>(b) the purported admission of the child or young person to government control was not made, or was not expressed to be made, for a purpose specified in paragraph 18 (1) (a) of the Principal Ordinance as then in force,</p>

the purported admission of the child or young person to government control shall be deemed always to have had the same force and effect as it would have had if it had been made, and had been expressed to be made, for a purpose specified in paragraph 18 (1) (a) of the Principal Ordinance, as in force on the date of the purported admission.

(3) Where—

- (a) a child or young person has been admitted, or is, by virtue of sub-section (2), to be deemed to have been admitted, to government control under section 18 of the Principal Ordinance, as in force at any time before the commencement of this Ordinance; and
- (b) immediately before the commencement of this Ordinance, the child was still a ward, or is, by virtue of sub-section (2) of this section, to be deemed to have been still a ward, within the meaning of the Principal Ordinance,

the Principal Ordinance, as amended by this Ordinance, applies to, and in relation to, that child or young person as if—

- (c) this Ordinance had been in force when the child or young person was admitted, or is to be deemed to have been admitted, to government control; and
- (d) the child or young person had been so admitted under the Principal Ordinance, as amended by this Ordinance.

(4) Where—

- (a) at any time before the commencement of this Ordinance, an arrangement was made in pursuance of sub-section 18 (1) of the Principal Ordinance for the provision of accommodation and maintenance for a child or young person; and
- (b) immediately before the commencement of this Ordinance, the child or young person was still a ward or is, by virtue of sub-section (2) of this section, to be deemed to have been still a ward, within the meaning of the Principal Ordinance,

the arrangement has the same force and effect after the commencement of this Ordinance as it would have had if—

- (c) this Ordinance had been in force when the arrangement was made; and
- (d) the arrangement had been made under the Principal Ordinance, as amended by this Ordinance.

(5) For the purposes only of proceedings instituted in a court before the commencement of this Ordinance and pending at that commencement, this section has effect as if sub-section (2) were omitted.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 11 April 1979.
2. Ordinance No. 17, 1957 as amended by No. 14, 1962; No. 19, 1966; No. 27, 1968; No. 17, 1969; No. 32, 1971; No. 36, 1973; No. 47, 1974; No. 17, 1975; and No. 65, 1977.