
CHILD PROTECTION ACT 1974

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CHILD PROTECTION

No. 104 of 1974

AN ACT to provide further and better protection for children of tender years who have suffered from beatings or other cruel treatment.

[24 January 1975]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—(1) This Act may be cited as the *Child Protection Act 1974*. Short title and commencement.

(2) This Act shall commence on a date to be fixed by proclamation.

Interpretation.

2—(1) In this Act, unless the contrary intention appears—

“authorized officer” means a person who is appointed an authorized officer under section 5;

“Board” means the Child Protection Assessment Board established under section 3;

“child protection order” means an order under section 10;

“hospital” means any hospital or other institution that is, pursuant to section 7, a hospital for the purposes of this Act;

“hospital authority”, in relation to a hospital, means the authority, officer, or other person who is the hospital authority of that hospital for the purposes of this Act pursuant to section 7;

“medical practitioner” means a legally qualified medical practitioner;

“paediatrician” means a medical practitioner who is qualified as a paediatrician for the purposes of this Act;

“responsible medical officer”, in relation to a child liable to be detained in hospital under a child protection order, means the medical practitioner for the time being responsible for the medical treatment of that child.

(2) References in this Act to injury shall be construed as including references to disease or any other morbid condition.

(3) For the purposes of this Act, a child may be regarded as having suffered cruel treatment notwithstanding that the treatment was not intended to be cruel or was not intended to result in injury to the child; and the neglect, or failure to perform any act required for the welfare, of the child may constitute cruel treatment of that child.

(4) A medical practitioner shall be deemed to be qualified as a paediatrician for the purposes of this Act if he is, or is qualified to be, a member of the Australian Paediatric Association or, if that association ceases to exist, or ceases to exist under that name, is, or is qualified to be, a member of such body, or holds such qualifications, as the Minister, after consultation with the Medical Council of Tasmania, may by order declare to be appropriate for the purposes of this Act.

PART II

ADMINISTRATION

3—(1) There shall be established a board to be known as the Child Protection Assessment Board.

(2) The Board shall consist of not more than five members appointed by the Governor, one of whom shall be so appointed as chairman of the Board.

(3) The chairman of the Board shall be a legal practitioner.

(4) Of the members of the Board other than the chairman—

(a) one shall be a paediatrician;

(b) one shall be a medical practitioner who has special experience in the diagnosis or treatment of mental disorders; and

(c) one shall be a person who has special experience in social work.

(5) A member of the Board holds office on the terms of his instrument of appointment, but may resign his office by notice in writing given to the Minister.

(6) Any member of the Board may, with the approval of the Minister, appoint another person to be his deputy, and a deputy so appointed holds office during the pleasure of the Minister.

(7) The deputy of a member of the Board is, in the event of the absence of the member of whom he is the deputy from a meeting of the Board, entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Board and, in the case of the deputy of the chairman of the Board, shall be deemed to be chairman of the Board.

(8) The chairman of the Board or his deputy shall preside at any meeting of the Board at which he is present and, if neither is present, such one of the members present as they may choose shall preside at the meeting.

(9) The person presiding at a meeting of the Board has a deliberative vote, and if there is an equality of votes on any matter before a meeting of the Board, he has a second or casting vote.

(10) An officer of the Public Service may hold office as a member of the Board, or a deputy of a member, in conjunction with his office as an officer of the Public Service.

(11) Three members of the Board form a quorum at any meeting of the Board.

(12) Subject to this Act the Board shall regulate its own proceedings.

(13) There shall be paid to a member of the Board such remuneration and allowances as the Governor may determine.

Secretary, staff,
&c., of the
Board.

4—(1) The Governor may appoint a secretary of the Board and an officer of the Public Service may, with the approval of the Public Service Board, hold office as secretary of the Board in conjunction with his office as an officer of the Public Service.

(2) The Minister may make arrangements to provide for the Board such staff and accommodation as it may require.

Authorized
officers.

5 The Board may appoint authorized officers for the purposes of this Act.

Exercise of
the functions
of the Board.

6—(1) The Board may delegate any of its functions under this Act to the chairman of the Board.

(2) Where under this Act any notification is required to be given, or any report required to be made, to the Board it is sufficient if that notification is given, or that report made, to a member of the Board or the secretary of the Board.

(3) Where any notification is given, or any report made, or any other information is supplied to the Board, the Board may direct an authorized officer to take such action as he is entitled to take under this Act as the Board considers necessary or desirable in the circumstances and the officer shall comply with that direction.

(4) To the extent that he is authorized by the Board so to do, a person may, in his own name and on behalf of the Board, institute and carry on any proceedings that the Board is authorized to institute or carry on under this Act; and the Board may appear in any such proceedings by a person authorized by it in that behalf.

Hospitals and
hospital
authorities.

7—(1) Where the Minister is satisfied that—

(a) any public hospital within the meaning of the *Hospitals Act* 1918; or

(b) any institution maintained by the State,

has special facilities for the diagnosis and treatment of injuries suffered by young children he may, by order, declare that hospital or institution to be a hospital to which this Act applies.

(2) The Minister may revoke any order made by him under subsection (1).

(3) For the purposes of this Act the hospital authority for a hospital that is a public hospital is such officer in the employment of the hospital board having the management and charge of the hospital under the *Hospitals Act* 1918 as it may designate, or, if in respect of any such hospital no officer is so designated, that hospital board.

(4) For the purposes of this Act the hospital authority for a hospital that is an institution referred to in subsection (1) (b) is such officer as the Minister may designate for the purpose.

PART III

PROTECTION OF CHILDREN

8—(1) Any person who suspects upon reasonable grounds that a child who has not apparently attained the age of 12 years has suffered injury through cruel treatment is entitled to report the fact to an authorized officer, and the report may be made orally or in writing.

Information as to injuries to young children.

(2) The Governor may, by order, declare that persons of specified classes, being persons following professions, callings, or vocations specified in the order or holding offices so specified, shall make such report as is referred to in subsection (1) when, in the course of practice of those professions, callings, or vocations or in exercising the functions of those offices, circumstances come to their notice that warrant such reports being made.

(3) Where a report has been made pursuant to subsection (1) or subsection (2)—

- (a) the making of the report shall not in any proceedings before any court or tribunal be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) no liability as for defamation is incurred by reason of the making of the report;
- (c) the making of the report shall not constitute a ground for civil proceedings for malicious prosecution or conspiracy;
- (d) the report shall not be admissible in evidence in any proceedings before any court or tribunal except in the cases specified in subsection (4) and no evidence of the contents thereof is so admissible except in those cases; and
- (e) a person shall not, except in the cases specified in subsection (4) (b), be compelled in any proceedings before any court or tribunal to produce the report, or any copy of, or extract from, the report, or to disclose, or give any evidence of, any of the contents of the report.

(4) The cases referred to in subsection (3) (d) and (e) are the following:—

- (a) Where the report is tendered in evidence, or the evidence in respect of the report is given, by the person by whom the report was made in answer to a charge or allegation made against him in the proceedings;
- (b) In support of, or in answer to, a charge or allegation made in the proceedings against any person in relation to the exercise of his powers or duties under this Act.

Requirement to
take child for
treatment.

9—(1) Where it appears to an authorized officer from his own knowledge or information supplied to him that a child who has apparently not attained the age of 12 years has suffered injury as a result of cruel treatment he may require any person who appears to be the parent of the child or to have for the time being the care of the child—

- (a) to cause that child to be taken to a hospital for the purpose of its being examined by a paediatrician; and
- (b) to ensure that, so far as he is able, such recommendations as are made by a medical practitioner with respect to the medical treatment of the child are carried out.

(2) Where an authorized officer is requested so to do by a person upon whom a requirement has been, or could be, made under subsection (1), or if it appears to him that it is not reasonably practicable for that person to comply with a requirement made of him under paragraph (a) of that subsection, the authorized officer shall, if that person so agrees, cause the child to be taken to a hospital for the purpose of his being examined by a paediatrician.

(3) Where an authorized officer makes a requirement under this section he shall forthwith notify the Board in writing of the requirement.

(4) Where a requirement has been made under this section the authorized officer by whom it is made shall take all such steps as are reasonably open to him to ascertain whether the requirement is being complied with and he shall notify the Board if he finds that it is not being complied with or if he finds circumstances have arisen that give him reason to believe that the requirement will not be complied with.

Child
protection
orders.

10—(1) Where it appears to a magistrate on an application by the Board that a child who has apparently not attained the age of 12 years may have suffered injury as a result of cruel treatment he

may, if he considers it desirable in the interests of the child so to do, by order direct that the child be taken to such hospital as may be specified in the order and be kept in hospital for such period as may be specified in the order, not extending beyond 30 days from the making of the order.

(2) On an application by the Board, a magistrate may, by a further order, extend the period of a child protection order for a further period not exceeding 30 days if he is satisfied that it is in the interests of the child so to do.

(3) A magistrate, on the application of the Board, or of the parent of the child or any other person who is willing to care for the child, may revoke a child protection order if he is satisfied that the continuance in force of the order is no longer required in the interests of the child.

(4) An application by the Board under this section may be heard *ex parte*, and any evidence given in support of the application may be given by affidavit.

(5) Where an application is made under this section otherwise than by the Board the court shall not hear the application unless it is satisfied that notice of the intention to make the application has been served on the Board.

(6) Where an order is made or revoked by a magistrate under this section he shall cause notice thereof to be given forthwith to the Board.

(7) References in this Act to the period of a child protection order shall be construed as references to the period specified in the order as the period for which the child is to be kept in hospital under the order or, if that period has been extended under this section, that period as extended from time to time.

11—(1) Where, on an application made by the Board in respect of a child under section 10, or on an application made by the Board in respect of a child subject to a child protection order, a magistrate is satisfied that the child has suffered injury through cruel treatment, he may, in addition to, or in lieu of, exercising any powers under this Act, exercise in relation to that child, and his parent or guardian, the like powers as if he were a children's court and the child had been brought before him under the *Child Welfare Act 1960* and found to be a neglected child within the meaning of that Act.

Powers under
Child Welfare
Act 1960.

(2) Where a child protection order is, or has been, in force in respect of a child the Board, if the child is or becomes a ward of the State, may, after consultation with the Director of Social Welfare, request him to ensure that the child is dealt with in the manner indicated in the request and, in discharging his responsibilities, and otherwise exercising his functions, in relation to the child, the Director shall, as far as practicable, comply with the request.

(3) Where a child to whom a child protection order relates is brought before a children's court under Division III of Part III of the *Child Welfare Act* 1960 that court, in addition to or in lieu of exercising any powers under that Act, may exercise any of the powers exercisable by a magistrate under section 10 on an application made by the Board.

Effect of child protection order.

12—(1) A child protection order is sufficient authority—

(a) for any authorized officer to take the child to whom the order relates to the hospital named in the order within the period of the order; and

(b) for the hospital authority of the hospital, named in the order, to detain the child in the hospital during that period.

(2) Where under section 13 a child who is subject to a child protection order is transferred from one hospital to another the order thereafter has effect as if the hospital to which he is transferred were the hospital named in the order.

Transfer of child to another hospital.

13—(1) Where a child is liable to be detained in a hospital by virtue of a child protection order and the hospital authority is of opinion that the child should be transferred to another hospital and is satisfied that arrangements have been made for the accommodation of the child in that other hospital it may, by instrument in writing, authorize the child to be so transferred.

(2) An instrument made under subsection (1) for the transfer of a child is sufficient authority for an authorized officer or any officer on the staff of the hospital from which or to which the child is to be transferred or any person authorized by the hospital authority of either hospital to take the child to the hospital to which he is to be transferred within 7 days of the date of the instrument.

(3) The hospital authority of a hospital shall furnish the Board with a copy of each instrument made under subsection (1) authorizing the transfer of a child under this section; and the

hospital authority of a hospital to which a child is transferred under this section shall notify the Board and the parents or those in *loco parentis* in writing that the child has been so transferred.

14—(1) Where a child is liable to be detained in a hospital under this Act, the Board, on the recommendation of the responsible medical officer, may allow the child to be absent from the hospital in the care of a specified person either indefinitely or for a specified period.

Authorized absence of child from hospital.

(2) Where a child is allowed to be absent from a hospital under this section the Board may by notice in writing given to an authorized officer require the child to be returned to that hospital or to some other hospital specified in the notice.

(3) A notice under this section is sufficient authority for an authorized officer to take the child to the hospital specified in the notice to which he is to be returned pursuant thereto; but the child shall not, under this section, be taken from the care of any person, unless that person, is, or has been, furnished with a copy of the notice.

(4) Where, pursuant to a notice under this section, a child is taken to a hospital other than that specified in the child protection order in force in respect of him he shall be deemed, for the purposes of this Act, to have been transferred to that hospital.

(5) A child shall not be taken to a hospital under this section after the period of the child protection order in force in respect of him has expired.

15 Where a child is liable to be detained in a hospital pursuant to a child protection order and, except as authorized by this Act, is absent from that hospital, any authorized officer or any officer on the staff of that hospital or any person authorized by the hospital authority thereof may, during the period of the order, take the child to that hospital.

Return of child absent without authority.

16—(1) If it appears to a justice of the peace, on information on oath laid by a police officer or any person who is authorized under this Act to take the child to a hospital, that a child is liable to be taken to a hospital under this Act and—

Warrants for removal of child.

(a) that there is reasonable cause to believe that the child is to be found on any premises; and

(b) that admission to those premises has been refused or that a refusal of admission thereto is apprehended, the justice may issue a warrant authorizing a police officer to enter the premises, if need be by force, and remove the child therefrom and take him to the hospital to which he may be taken under this Act.

(2) In the execution of a warrant under this section the police officer may be accompanied by a medical practitioner, and by any person who is authorized by or under this Act to take the child to the hospital.

Duties of medical practitioners in relation to children subject to the Act.

17—(1) Where a child has been taken to a hospital—

(a) in pursuance of section 9 or any requirement made thereunder; or

(b) in pursuance of a child protection order, the hospital authority shall ensure that the child is, as soon as possible, examined by a paediatrician, and the paediatrician examining the child shall forthwith upon his examination of the child submit to the Board a report on the condition of the child and the instructions he has given or the recommendations he has made with respect to the medical treatment of the child.

(2) Where a child is subject to a child protection order the responsible medical officer shall, as he may be requested by the Board, submit to the Board a report on the condition of the child and the medical treatment that the child is undergoing.

(3) A request made by the Board for the purposes of subsection (2) may be so made through the hospital authority of the hospital in which the child is for the time being liable to be detained under the child protection order.

Contributions by the Board.

18 With the approval of the Minister, the Board may defray, make contributions towards, the expenses incurred in the conveyance, examination, medical treatment, or accommodation of a child in consequence of the making of a requirement or order under this Act.

Expenses of Board.

19 The expenses of the Board shall be defrayed out of the moneys provided by Parliament.