

# Children and Young Persons Amendment Act 1982

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## **An Act to amend the Children and Young Persons Act 1974**

**BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

### **1 Short Title and commencement**

- (1) This Act may be cited as the Children and Young Persons Amendment Act 1982, and shall be read together with and deemed part of the Children and Young Persons Act 1974 (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on the 1st day of January 1983.

### **2 Interpretation**

Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term “summary offence”, the following definition:

““Visiting Committee” means a Visiting Committee established under section 70 of this Act.”.

### **3 Notification of birth of child to unmarried mother**

The principal Act is hereby amended by repealing section 10.

### **4 Powers in respect of unaccompanied children and young persons**

- (1) The principal Act is hereby amended by repealing section 12 (as amended by subsections (1) to (3) of section 50 of the Summary Offences Act 1981), and substituting the following section:

#### **“12**

- “(1) Where a child or young person is found unaccompanied by his parent or guardian or by any other person who has the care of him and—

“(a) He is associating with known criminals or drug addicts; or

“(b) He is in an environment which is detrimental to his physical or moral well-being,—

any member of the Police may, using such force as may reasonably be necessary, take the child or young person and forthwith deliver him into the custody of his parents or guardian or of any other person who has the care of him.

- “(2) Where the member of the Police cannot find any of the persons to whom the child or young person may be delivered under subsection (1) of this section, he may—

- “(a) Deliver the child or young person to any person who, having regard to the circumstances, is able and willing to care for the child or young person; or
- “(b) Place the child or young person in the custody of the Director-General by delivering the child or young person to a Social Worker.
- “(3) Placement of a child or young person in the custody of the Director-General under subsection (2)(b) of this section shall be sufficient authority for the detention of the child or young person by a Social Worker or in a residence under this Act until—
- “(a) A parent or guardian or person having the care of the child or young person is found; or
- “(b) The child or young person is made the subject of a complaint under section 27 of this Act and is brought before a Children and Young Persons Court so that the Court may determine whether he is to be held in custody pending the disposal of the complaint; or
- “(c) The expiry of a period of 3 days after the day on which the child or young person was detained pursuant to subsection (1) of this section—  
whichever first occurs.
- “(4) Where—
- “(a) A member of the Police finds a child Or young person in a public place (within the meaning of section 2(1) of the Summary Offences Act 1981) during school hours and reasonably believes that child or young person to be between the age of 6 years and the age of 15 years; and
- “(b) The child or young person or any person accompanying the child or young person is unable to give to the member of the Police a satisfactory explanation for the child’s or the young person’s absence from school at that time,—  
the member of the Police—
- “(c) May deliver the child or young person—
- “(i) To the school at which the member of the Police believes the child or young person is or should be enrolled; or
- “(ii) To his parents or guardian or to any other person having the care of the child or young person; and
- “(d) May report the matter to a Social Worker.
- “(5) In this section the term ‘young person’ means, subject to subsection (4) of this section, a boy or girl of or over the age of 14 years but under the age of 16 years.”
- (2) Section 50 of the Summary Offences Act 1981 is hereby consequentially amended by repealing subsections (1) to (3).

## **5 Matters to be referred to Children's Boards**

Section 15 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

- “(5) In determining its course of action the Board shall, bearing in mind the needs and rights of the child, his parents or guardians, and the community, and the degree of cooperation offered by the child and his parents or guardians, seek—
- “(a) To reduce or remove any problems or difficulties which have arisen because the child's needs for care, protection, or control are not being met; or
  - “(b) To prevent the child from committing offences in the future.”

## **6 Proceedings not to be published**

Section 24 of the principal Act is hereby amended by adding the following subsection:

- “(4) This section shall not apply in respect of the proceedings that result where a young person is brought before a District Court for sentence or decision pursuant to an order made under section 36(1)(j) of this Act.”

## **7 Proceedings in respect of children or young persons in need of care, protection, or control**

Section 27 of the principal Act is hereby amended by inserting, after subsection (2)(as substituted by section 7(1) of the Children and Young Persons Amendment Act 1977), the following subsection:

- “(2a) Where it is alleged in a complaint made under this section that a child is in need of care, protection, or control, that complaint shall not be heard and determined by a Court unless—
- “(a) The facts alleged in support of the complaint have been reported to a Children's Board pursuant to section 15 of this Act; or
  - “(b) The Court decides that the delay in dealing with the substance of the complaint that would be caused by the reporting of those facts to a Children's Board would be—
    - “(i) Prejudicial to the care and well-being of the child; or
    - “(ii) Contrary to the public interest.”

## **8 Manner of dealing with charges**

Section 34(2) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraphs:

- “(c) Where the offence is an indictable offence not punishable summarily (other than murder or manslaughter), the Children and Young Persons Court may—

- “(i) If in its opinion, when all the evidence has been given, the evidence adduced by the informant is sufficient to put the young person on his trial for the indictable offence; or
- “(ii) If, before the evidence has been given or while the evidence is being given or after all the evidence has been given, the young person indicates to the Court that he desires to plead guilty to the indictable offence,—
- give the young person an opportunity of foregoing his right to trial by jury and of electing to have the information heard and determined in a Children and Young Persons Court by a District Court Judge appointed under section 21 of this Act; and
- “(d) If the young person accepts the opportunity given to him under paragraph (c) of this subsection and elects to have the information so heard and determined, the Children and Young Persons Court shall have jurisdiction to hear and determine the information and otherwise deal with the young person in accordance with this Act as if the offence were punishable summarily.”

## 9 Reports of Social Workers

- (1) The principal Act is hereby amended by repealing section 41 (as amended by section 11 of the Children and Young Persons Amendment Act 1977), and substituting the following section:

### “41

- “(1) It shall be the duty of every person who lays an information in respect of an offence alleged to have been committed by a young person, or who makes any complaint in relation to any child or young person, forthwith to advise the Director of the Social Welfare District in which the information is laid or the complaint is made of the subject-matter of the information or complaint and of the date set down for the hearing of the matter.
- “(2) It shall be the duty of the Registrar of a Children and Young Persons Court to which any proceedings have been removed from any other Court forthwith to advise the Director of the Social Welfare District in which the Children and Young Persons Court is situated of the subject-matter of the proceedings, and of the time when and the place where the matter will be dealt with by the Court.
- “(3) Subject to subsection (6) of this section, before the Court makes any order following a finding that a charge or complaint is proved, a Social Worker may, and shall when so required by a Judge exercising the jurisdiction of the Court, report to the Court on—
- “(a) The circumstances of the case; and
- “(b) The personality, behaviour, character, and personal history of the child or young person; and

- “(c) Such details of the parentage of the child or young person and of his family situation and background as may be of assistance to the Court in determining the most suitable method of dealing with him.
- “(4) Where a report is required under subsection (3) of this section, the Social Worker shall be allowed a reasonable time within which to furnish his report.
- “(5) The Court shall consider any report furnished by a Social Worker.
- “(6) A Social Worker’s report must be available to the Court—
- “(a) Before it makes any decision or order under section 31 of this Act; and
- “(b) Before it makes an order under section 36(1)(i) of this Act.
- “(7) Any Social Worker may, in the course of completing his report, apply in writing to the principal or head teacher of any State or private school for a written report in the prescribed form for the guidance of the Court and to assist the Social Worker in completing his report to the Court, and it shall be the duty of the principal or head teacher to supply such written report as will inform the Court of the child’s or young person’s intellectual capacity, scholastic performance, behaviour, and such other details of background as may prove helpful to the Court in reaching a decision about the child or young person.
- “(8) Any Social Worker who furnishes, and any principal or head teacher who supplies, any report under this section shall not be under any civil or criminal liability in respect thereof unless he has acted in bad faith or without reasonable care.”
- (2) Section 11 of the Children and Young Persons Amendment Act 1977 is hereby consequentially repealed.

## **10 Custody of child or young person before disposal of complaint or following arrest**

The principal Act is hereby amended by repealing section 43, and substituting the following section:

### **“43**

- “(1) Where a child or young person is arrested with or without warrant for any offence, whether punishable by imprisonment or not, any member of the Police may—
- “(a) Release the child without bail; or
- “(b) Release the young person with or without bail; or
- “(c) Deliver the child or young person into the custody of his parents or guardian or of any other person who has the care of the child or young person or of any other person approved by the member of the Police for the purpose.

- “(2) If it is not, in the view of a member of the Police, practicable or desirable to exercise, in respect of any child or young person who has been arrested for any offence, any of the powers conferred by subsection (1) of this section, the member of the Police shall, as soon as practicable and in any event not later than 24 hours after the arrest, place the child or young person in the custody of the Director-General—
- “(a) By delivering the child or young person to a Social Worker; and
  - “(b) By presenting to the Social Worker on the prescribed form—
    - “(i) Identifying details of the child or young person; and
    - “(ii) The circumstances of the arrest of the child or young person; and
    - “(iii) The date and time of the intended appearance of the child or young person before the Court.
- “(3) Notwithstanding the provisions of subsection (2) of this section, if a senior Social Worker and a member of the Police, being a senior sergeant or a commissioned officer, are satisfied—
- “(a) That a Social Worker has good cause to believe that a young person is—
    - “(i) Likely to abscond; or
    - “(ii) Be violent; and
  - “(b) That suitable facilities for the detention in safe custody of that young person are not available to the Director-General in the locality in which the young person is detained,—
- the young person may, on the joint certificate in the prescribed form of that senior Social Worker and that member of the Police, be detained in Police custody for a period exceeding 24 hours and until appearance before the Court.
- “(4) Where a senior Social Worker and a member of the Police issue a joint certificate under subsection (3) of this section, there shall, within 3 days after the day on which the certificate is issued, be furnished by the senior Social Worker to the Director-General and by the member of the Police to the Commissioner of Police—
- “(a) A copy of the certificate; and
  - “(b) A written report on—
    - “(i) The circumstances in which the certificate came to be issued; and
    - “(ii) The duration of the period for which the young person has been detained, or is likely to be detained, in Police custody.
- “(5) Placement of a child or young person in the custody of the Director-General under subsection (2) of this section shall be sufficient authority for the detention of the child or young person by a Social Worker or in a residence under this Act, or under the care of any suitable person approved by a Social Worker, until—

- “(a) In the case of a young person, he is brought before a Children and Young Persons Court to answer the charge; or
- “(b) In the case of a child, he is made the subject of a complaint under section 27 of this Act and is brought before a Children and Young Persons Court so that the Court may determine whether he is to be held in custody pending the disposal of the complaint; or
- “(c) The expiry of a period of 3 days after the day on which the child or young person was arrested—
- whichever first occurs.
- “(6) Where any child or young person who is the subject of a complaint under section 27 of this Act appears before a Children and Young Persons Court presided over by a District Court Judge or a Justice, or where any child or young person is brought, following his arrest, before such a Court under paragraph (a) or paragraph (b) of subsection (5) of this section, that Court may, at any time and from time to time before the charge or complaint is determined, order that the child or young person be held in custody pending the disposal of the charge or complaint if, in the opinion of the Court,—
- “(a) The child or young person is likely to abscond; or
- “(b) The child or young person is in need of care and control for the period of custody; or
- “(c) It is desirable in the interests of the child or young person that he be held in custody.
- “(7) A Children and Young Persons Court presided over by a District Court Judge or Justice or the High Court may from time to time review any order made under subsection (6) of this section.
- “(8) An order made under subsection (6) of this section is sufficient authority for the detention of a child or young person in a residence under this Act or by a Social Worker or any member of the Police:
- “Provided that a child or young person shall not be held, by virtue of any such order, in the custody of any member of the Police for more than 24 hours at any one time unless the Court has specifically ordered that the child or young person may be held in Police custody.
- “(9) Nothing in section 47 of the Criminal Justice Act 1954 limits the powers conferred by this section.
- “(10) Section 316(5) of the Crimes Act 1961 shall, in respect of children and young persons, be read subject to the provisions of this section and of Part II of this Act.
- “(11) Nothing in this section shall limit the inherent jurisdiction of the High Court or the provisions of any Act under which a young person may be granted bail except that any powers conferred by any such provisions on a District Court shall, where the person charged is a young person (other than one charged with

murder or manslaughter), be exercised by a Children and Young Persons Court presided over by a District Court Judge or a Justice.”

### **11 Appeal by child or young person**

Section 53 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Where, on the hearing of any complaint under section 27 of this Act in respect of a child or young person, a Children and Young Persons Court finds that the grounds of the complaint are proved, the child or young person may appeal to the High Court against the finding or against any admonition, discharge, or order, given or made under section 31(1) or section 31(3) of this Act, or against both the finding and any such admonition, discharge, or order.”

### **12 Appeal by parents**

The principal Act is hereby amended by repealing section 54, and substituting the following section:

“54

“(1) Where, on the hearing of any complaint under section 27 of this Act in respect of a child or young person, a Children and Young Persons Court finds that the grounds of the complaint are proved, any parent or guardian of the child or young person or any person who has been acting in the place of a parent may appeal to the High Court against the finding or against any admonition, discharge, or order, given or made under section 31(1) or section 31(3) of this Act, or against both the finding and any such admonition, discharge, or order.

“(2) Where on the hearing of any charge against a young person a Children and Young Persons Court makes an order placing the young person under the guardianship of the Director-General or under the supervision of a Social Worker or postponing its final consideration of the matter, any parent or guardian of the young person or any person who has been acting in the place of a parent, may appeal to the High Court against the order.

“(3) Where on the hearing of any charge against a young person a Children and Young Persons Court makes an order under paragraph (e) or paragraph (f) of section 36(1) of this Act requiring a parent or guardian of the young person to pay any sum by way of compensation or to make restitution, that parent or guardian may appeal to the High Court against the order.”

### **13 Appeal by Police or Social Worker**

(1) The principal Act is hereby amended by inserting, after section 55, the following section:

“55a

Where any complaint under any of the provisions of paragraphs (a), (b), (c), (d), and (g) of section 27(2) of this Act has been heard by a Children and

Young Persons Court, the complainant may appeal to the High Court against the finding of the Children and Young Persons Court or against any admonition, discharge, or order, given or made under section 31(1) of this Act, or against both the finding and any such admonition, discharge, or order.”

- (2) Section 57(1)(a) of the principal Act is hereby consequentially amended by omitting the words “or section 55”, and substituting the words “section 55, or section 55a”.

#### **14 Review of supervision orders**

Section 65 of the principal Act is hereby amended by omitting the expression “6 months” in both places where it appears, and substituting in each case the expression “3 months”.

#### **15 New sections substituted**

The principal Act is hereby amended by repealing section 70, and substituting the following sections:

##### **“70 Visiting Committees**

- “(1) The Minister shall establish a Visiting Committee for each institution established under section 69 of this Act.
- “(2) Each Visiting Committee shall consist of 3 or more persons of whom—
- “(a) One shall be appointed as Chairman; and
  - “(b) One shall be appointed on the nomination of the Minister of Maori Affairs; and
  - “(c) One shall be appointed to represent the interests of the community in general.
- “(3) The members of each Visiting Committee shall be appointed by the Minister.
- “(4) In appointing any person as a member of a Visiting Committee, the Minister shall have regard to—
- “(a) That person’s personal attributes; and
  - “(b) That person’s knowledge of, and interest in, the welfare of children generally.
- “(5) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason of that person’s appointment under this section as a member of a Visiting Committee.
- “(6) The Department of Social Welfare shall furnish such secretarial, recording, and other services as may be necessary to enable each Visiting Committee to exercise its functions and powers.

“(7) The provisions of Schedule 1a to this Act shall have effect as to the constitution and proceedings of Visiting Committees and other matters relating to Visiting Committees.

**“70a Functions of Visiting Committees**

“(1) Every Visiting Committee shall visit from time to time, and at least once in each period of 3 months, the institution for which the Visiting Committee is appointed.

“(2) Where a Visiting Committee visits an institution under subsection (1) of this section, that Visiting Committee shall ensure that—

“(a) The date and time of the visit are made known to the children and young persons in the institution; and

“(b) The children and young persons in the institution are aware that they may discuss matters with any member of the Visiting Committee.

“(3) Any member of a Visiting Committee may, in the course of a visit under subsection (1) of this section, or at any other time,—

“(a) Enter and inspect any part of the institution for which the Visiting Committee is appointed; and

“(b) Examine the state and condition of any child or young person in that institution; and

“(c) Communicate with any child or young person in that institution or with any member of the staff of that institution; and

“(d) Examine any documents or records which are held in that institution and which relate to any child or young person in that institution.

“(4) Any Visiting Committee may report to the Director-General—

“(a) On any specific matter of concern relating to the care, control, or treatment of a child or young person in the institution:

“(b) On any other matter relating to the institution for which the Visiting Committee is appointed.

“(5) Every Visiting Committee shall have such other powers and functions as may be prescribed by regulations made under this Act.

“(6) Subject to the provisions of this Act and of any regulations made under this Act, every Visiting Committee may regulate its own procedure.

**“70b Annual report of Visiting Committee**

“(1) Every Visiting Committee shall in the month of June in each year deliver a report on its activities to the Minister.

“(2) Every report delivered to the Minister under subsection (1) of this section shall be made public by the Minister within one month after the date on which it is delivered to the Minister.”

**16 Inspection of homes**

Section 92(1) of the principal Act is hereby amended by inserting, after the words “any part thereof”, the words “or inspect any system of foster care recognised by the Director-General under section 86(4) of this Act”.

**17 Search warrants**

The principal Act is hereby amended by inserting, after section 104, the following section:

**“104a**

- “(1) Any Judge or Justice or any Registrar (not being a member of the Police) who, on application in writing made on oath by any member of the Police or a Social Worker is satisfied that there are reasonable grounds for suspecting that a child or young person to whom section 104(1) of this Act applies is for the time being at any known premises or place, may issue a warrant authorising any member of the Police or Social Worker to enter and search, by force if necessary, any such premises or place specified in the warrant, and to remove the child or young person using such force as may reasonably be necessary and return him to the residence from which he absconded or from which he is absent or place him in any other residence under this Act.
- “(2) It shall be the duty of everyone executing any warrant issued under subsection (1) of this section to have it with him and to produce it if required to do so.”

**18 New Schedule 1a inserted in principal Act**

The principal Act is hereby amended by inserting, after the First Schedule, the Schedule 1a set out in the Schedule to this Act.

**19 Transitional provisions**

- (1) Every member of a Visiting Committee who has been appointed under section 70 of the principal Act and who is in office immediately before the 1st day of April 1983 by virtue of an appointment made before the 1st day of January 1983 shall vacate office on the commencement of the 1st day of April 1983.
- (2) Subject to subsection (3) of this section, every Visiting Committee of 2 or more persons that is in office at the commencement of this Act, and the members of every such Visiting Committee, may, so long as they continue in office, exercise, until the close of the 31st day of March 1983, in respect of the institution or institutions for which the Visiting Committee was appointed, the respective functions and powers conferred on a Visiting Committee by the principal Act (as amended by this Act), and the provisions of the principal Act (as so amended) shall apply accordingly with such modifications as are necessary.
- (3) The Minister may at any time revoke, either generally or in respect of a specified institution, the appointment of any Visiting Committee to which

subsection (2) of this section relates or the appointment of any member of any such Visiting Committee.

- (4) The vacancies created by subsection (1) of this section or by any revocation effected under subsection (3) of this section are not extraordinary vacancies for the purposes of clause 2 of Schedule 1a to the principal Act.
- (5) No member of a Visiting Committee who vacates office under subsection (1) of this section or by reason of a revocation effected under subsection (3) of this section shall be entitled to compensation for loss of that member's office as a member of a Visiting Committee.
- (6) Nothing in this section prevents a member of a Visiting Committee who vacates office under subsection (1) of this section or by reason of a revocation effected under subsection (3) of this section from being reappointed as a member of a Visiting Committee.

## **20 Amendment to Department of Social Welfare Act 1971**

The Department of Social Welfare Act 1971 is hereby amended by repealing section 9, and substituting the following section:

### **“9 Honorary Social Workers**

- “(1) The Director-General may from time to time appoint such persons as he thinks fit to be Honorary Social Workers.
- “(2) No person shall, by reason only that he is an Honorary Social Worker, be deemed to be employed under the provisions and for the purposes of the State Services Act 1962.
- “(3) Every Honorary Social Worker shall, in respect of the exercise and performance by him of the powers, duties, and functions conferred or imposed on him, act in accordance with any directions that the Director-General may give to him.
- “(4) Every appointment under this section shall be for such term, not exceeding 2 years, as the Director-General thinks fit; but any person appointed under this section may from time to time be reappointed.
- “(5) Any person appointed under this section may resign his office at any time by giving written notice to that effect to the Director-General.
- “(6) The Director-General may at any time revoke the appointment of any person as an Honorary Social Worker.”

**Schedule**  
**NEW SCHEDULE 1A TO PRINCIPAL ACT**

Section 18

**“SCHEDULE 1a**  
**Provisions Relating to Visiting Committees**

Section 70(7)

**1 Term of office of members of Visiting Committees**

- (1) Except as otherwise provided in this Act, every member of a Visiting Committee shall hold office for a term of 3 years, and shall be eligible for reappointment from time to time.
- (2) Every member of a Visiting Committee shall, unless that person sooner vacates office under clause 2 of this Schedule, continue in office until either he is reappointed or his successor is appointed, notwithstanding that the term for which that member was appointed may have expired.

**2 Extraordinary vacancies**

- (1) Any member of a Visiting Committee may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (2) Any member of a Visiting Committee may at any time resign the member's office by writing addressed to the Minister.
- (3) If any member of a Visiting Committee dies, or resigns, or is removed from office, the member's office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.
- (4) An extraordinary vacancy shall be filled in the manner in which the appointment to the vacant office was originally made.
- (5) In the case of an extraordinary vacancy, the Minister may appoint any person to fill the vacancy for the residue of the term for which the vacating member was appointed.
- (6) The powers of a Visiting Committee shall not be affected by any vacancy in its membership.

**3 Fees and allowances**

There shall be paid out of money appropriated by Parliament for the purpose to the members of any Visiting Committee remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if any such Visiting Committee were a statutory Board within the meaning of that Act.

**4 Sickness or incapacity**

- (1) In the event of the sickness or other incapacity of any member of a Visiting Committee, the Minister may appoint any person to act in the place of that member during that member's incapacity.
- (2) Any person appointed under this clause to act in the place of a member who is Chairman shall not be Chairman by reason only of that person's appointment under this clause.

**5 Members of Visiting Committee not personally liable**

No member of a Visiting Committee shall be personally liable for any act done or omitted to be done by the Visiting Committee or by any member thereof in good faith in pursuance or intended pursuance of the powers and authorities of the Visiting Committee.”

This Act is administered in the Department of Social Welfare.