

Child Welfare Act 1960, Tasmania

1960 – 2003

Other Names: • Child Care Act 1960

URL: http://www.austlii.edu.au/au/legis/tas/num_act/cwa196048o1960161/

Details

The Child Welfare Act 1960 with the full title “An Act to consolidate and amend certain enactments relating to children and other persons who have not attained the age of twenty-one years” (Act no.48/1960) set out the provisions by which a child who was 16 years or younger could be made a ward of the state. This act also amended The Maintenance Act 1921 (Act no.12 Geo. V No.40) and the Master and Servant Act 1856 (Act no. 19 Vict. No.28) before being repealed and replaced in 2003 by the Child Care Act 2001 (Act no 62/2001).

Under the *Child Welfare Act* 1960, a child who was 16 years or younger, could be made a ward in one of three ways. The wardship lasted until the child attained 18 years, unless earlier discharged by the Minister.

Firstly, a child found guilty of a criminal offence could be released on a variety of orders or could be declared a ward of the State. The Act represented as a general principle of administration that an erring child shall be treated not as a criminal but as a child who was or may have been misguided or misdirected. In this spirit, section 21 of the Act stipulated that a children’s court could not order imprisonment for any offence committed by a child under 16 years of age. No final decision concerning a child could be made without a child welfare officer’s report.

Secondly, a child who was neglected or uncontrolled could be declared to be a ward of the State. The definition of a ‘neglected’ child in the *Child Welfare Act* 1960 included the concept of being in need of care and protection because the parent or guardian was unfit or not exercising proper care.

Section 31(2) defined proper care and guardianship, noting that:

proper care and guardianship shall be deemed not to be exercised in respect of a child if he is not provided with necessary food, lodging, clothing, medical aid, or nursing, or if he is neglected, ill-treated, or exposed by his parent or guardian.

A child could also be neglected if he or she was uncontrollable, had no fixed place of abode, was exposed to moral danger, was truanting from school, or associating with thieves, prostitutes, drunkards and opium users. The parents or a person having the care or custody of a child could bring the child before the court as being uncontrollable.

The Act also provides for an administrative way to admit a child as a ward of the State. On application by a parent, guardian or relative under section 35, the Director, with the Minister’s approval could admit the child as a ward of the State.

Many of the characteristics of children's courts (originally established by the *Youthful Offenders, Destitute and Neglected Children's Amendment Act 1905*) remained as before. Proceedings could be heard by a special magistrate, a provision introduced by the *Children of the State Act 1918*. If one was not available, a police magistrate or two Justices of the Peace could preside. Cases had to be heard in a different room to adult hearings. The court's jurisdiction extended to cases that could be heard by Police Magistrates, a Court of Petty Sessions or by a Justice of the Peace. Some indictable offences were now heard in the children's court for children under 14. If over that age, the magistrate had to ask if he or she was willing to be tried there. Other indictable offences, such as murder or manslaughter, still had to go before a jury in the Supreme Court.

The Child Welfare Act 1960 introduced interim orders, which were a way that the department could attempt to prevent a child going into 'care'. Interim orders lasted for 3 months, and enabled further investigations to be carried out before a decision was made to commit a child to the care of the state. The delay meant that committals did not take place unless it seemed to be absolutely necessary. It gave Child Welfare Officers time to support the family while they made the necessary changes for their child to be returned.

Children under an interim order were usually temporarily removed from their birth families.

Under the 1960 Act, what were once called certified children's Homes (institutions run by voluntary organisations and certified by the Tasmanian government) became known as approved children's Homes. Approved children's Homes were run by volunteers on a not for profit basis and approved by the government under section 10 of the 1960 *Child Welfare Act*. They replaced certified children's Homes, also run by volunteers, which were specifically for wards of state.

If the Minister considered a Home unsatisfactory or found that it did not comply with the requirements of the Act, he or she could give the Managers written instructions to make the necessary improvements. The Minister could withdraw certification if the Home had not complied within three months.

The Managers of an approved children's Home had to give three months notice of giving up their certificate of approval.

The Director of the Social Welfare Department had to ensure that each approved children's Home was inspected at least every three months. The Director or an authorised officer could go into a Home at any 'reasonable' time and inspect equipment, furniture, and fittings.

The government paid Managers maintenance for each ward of state or other child accommodated at the Home under the *Child Welfare Act*.

Remanded for observation, under the *Child Welfare Act 1960*, Section 24 (1), meant that a child had been found guilty of an offence and placed in the custody of the Director of the Social Welfare Department or its successors for up to three months so that further information could be obtained. The court then made a final decision about his or her placement. Some government records abbreviated the term to 'R.F.O.'

A child could also be 'remanded for any purpose' under the Act. This meant that a child had been placed in the custody of the Director of the Social Welfare Department or its successors for up to three months but not because he or she had been found guilty of an offence by a children's court.

Between 1977 and 1983, the number of children in approved children's Homes dropped by 50 percent.

In the 1980s, encouraged by the Department for Community Services, approved children's Homes began offering accommodation in cottage Homes instead of large institutions. Some also offered a variety of support services.

In 1997, the *Children, Young Persons and their Families Act* repealed the *Child Welfare Act*. The new Act does not provide for approved children's Homes.

More info

Chronology

- Industrial Schools Act 1863, Tasmania (1863 - 1867)
- Industrial Schools Act 1867, Tasmania (1867 - 1896)
 - Youthful Offenders, Destitute and Neglected Children's Act 1896, Tasmania (1896 - 1918)
 - The Children of the State Act 1918, Tasmania (1918 - 1936)
 - Infants' Welfare Act 1935, Tasmania (1935 - 1961)
- **Child Welfare Act 1960, Tasmania (1960 – 2003)**
 - Children, Young Persons and Their Families Act 1997, Tasmania (2000 - current)

Related Entries

Related Events

- [Inquiry into the Conditions at Weeroona Girls' Home, Public Service Commissioner, Tasmania \(1965\)](#)
Kevin Lyons, MHA, believed that the Child Welfare Act had been breached at Weeroona.
- [Committee of Review into the Child Welfare Act 1960, Tasmania \(1977 - 1978\)](#)

Related Glossary Terms

- [In Moral Danger \(c. 1939 - c. 1980\)](#)

Amends

- [The Maintenance Act 1921, Tasmania \(1922 - 1968\)](#)
Date: 1960 - 1968
- [The Master and Servant Act 1856, Tasmania \(1856 - 1986\)](#)

Is amended by

- [Age of Majority Act 1973, Tasmania \(1973 - current\)](#)
- [Child Welfare Amendment Act 1982, Tasmania \(1982 - 2003\)](#)
- [Child Welfare Amendment Act \(No.2\) 1982, Tasmania](#)
- [Child Welfare Amendment Act 1993, Tasmania \(1993 - 2003\)](#)

Related Organisations

- [Social Welfare Department, State of Tasmania \(1961 - 1983\)](#)
- [Residential Child Care Association of Tasmania \(c. 1970 - c. 1989\)](#)
- [Child Welfare Advisory Council \(1960 - c. 1998\)](#)
The Child Welfare Act 1960 provided for the Child Welfare Advisory Council.

Related Places

- [Cape Barren Island Reserve \(1881 - 1951\)](#)
Children from Cape Barren Island were committed to the 'care' of the state as neglected under the *Child Welfare Act*.

Related Concepts

- [Stolen Generations](#)

Resources

- Roe, Margot, *Report of the Committee of Review into the Child Welfare Act 1960 (Tasmania) and state social welfare services*, 1984
- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), [To Remove and Protect](#), 2014