

[AS REPORTED FROM THE HEALTH AND WELFARE COMMITTEE]

House of Representatives, 30 November 1983.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. V. S. Young

CHILDREN AND YOUNG PERSONS AMENDMENT

ANALYSIS

Title	9. Rights of person before Court
1. Short Title and commencement	10. Custody of child or young person before disposal of complaint or following arrest
2. Interpretation	11. Secure care and discipline of child or young person in custody before disposal of complaint or following arrest
3. New sections inserted	12. New sections substituted
4A. Principle in favour of family group	45A. Duty of Director-General to provide for supervision
4B. Principles in favour of normalisation, localisation, voluntariness, and participation	46. Conditions of supervision order
4C. Application of principles in respect of child or young person in guardianship or custody of Director-General	47. Power of Court to impose additional conditions
4. Warrants	13. New sections substituted
5. Warrant to remove child or young person	49. Effect of appointment of Director-General as guardian
6. Special provisions in respect of children or young persons alleged to be neglected or ill-treated	49AA. Secure care and discipline
7. Orders of the Court on complaints	49AB. Search without warrant
8. Young persons charged with offences	14. Power of inspection
	15. Regulations
	16. Transitional provisions

A BILL INTITULED

An Act to amend the Children and Young Persons Act 1974

BE IT ENACTED by the General Assembly of New Zealand
5 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 1983, and shall be read together with and deemed part of the
10 Children and Young Persons Act 1974* (hereinafter referred to as the principal Act).

(2) Except as provided in **section 6 (2)** of this Act, this Act shall come into force on the 1st day of January 1984.

*1974, No. 72

Amendments: 1977, No. 126; 1980, No. 87; 1982, No. 135

2. Interpretation—Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “Director-General”, the following definition:

“‘Guardianship’ has the meaning given to it by section 3 of the Guardianship Act 1968; and ‘guardian’ has a corresponding meaning:”.

3. New sections inserted—The principal Act is hereby amended by inserting, after section 4, the following sections:

“4A. Principle in favour of family group—

Struck Out

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(1) Any Court or person shall, in applying section 4 of this Act, have regard, to the principle that every child or young person is entitled, unless this Act otherwise expressly requires or unless it is impracticable, to live in the association of—

“(a) A family group that contains at least one adult member— 15

“(i) With whom the child or young person has a biological relationship; or

“(ii) To whom the child or young person has a significant psychological attachment; or

“(b) The child or young person’s whanau or other culturally recognised family group. 20

New

(1) Any Court or person shall, in applying section 4 of this Act, have regard to the principle that every child or young person is entitled, unless this Act otherwise expressly requires or unless it is impracticable, to live in the association of a family group— 25

“(a) Which contains at least one adult member—

“(i) With whom the child or young person has a biological relationship; or

“(ii) To whom the child or young person has a significant psychological attachment; and 30

“(b) Which is the child’s or young person’s whanau or other culturally recognised family group.

“(2) Where any Court or person is considering, by the exercise of any of the powers conferred by this Act, the removal of a child or young person from a family group of the kind described in **subsection (1)** of this section, that Court or person shall, in applying section 4 of this Act, have regard, to the extent (if any) by which the probable harm that the removal would cause to the mental, psychological, or physical well-being of that child or young person would be exceeded by the probable harm that would be caused to the mental, psychological, or physical well-being of that child or young person if that child or young person were to continue to live in the association of that family group. 45

“(3) A Court or person, in determining, for the purposes of subsection (2) of this section, the probable harm that the removal would cause to the mental, psychological, or physical well-being of the child or young person, shall take into account the likelihood of the child or young person returning to the family group.

Struck Out

“(4) This section shall not apply where the power to which section 4 of this Act is being applied is being exercised—

10 “(a) By reason of an offence committed by the child or young person; or

“(b) Following the making of a complaint under section 27 (2) (i) of this Act in respect of the child; or

“(c) Following the arrest of the child or young person.

15 “4B. **Principles in favour of normalisation, localisation, voluntariness, and participation**—(1) Any Court or person, in applying section 4 of this Act in respect of any child or young person who, by reason of his removal from a family group of the kind described in section 4A (1) of this Act or for
20 any reason, is not living in association with a family group of that kind, shall have regard to the following principles:

“(a) The principle that such a child or young person is entitled, unless this Act otherwise expressly requires or unless it is impracticable, to live a life that, having regard to the age and cultural background of the child or young person, is normal for a child or young person of that age and cultural background:

30 “(b) The principle that such a child or young person is entitled, unless this Act otherwise expressly requires or unless it is impracticable, to live in familiar places, among familiar social institutions, and with familiar people, in a locality that the child or young person knows:

35 “(c) The principle that such a child or young person is entitled, unless this Act otherwise expressly requires or unless it is impracticable, to make, free from unreasonable persuasion and unreasonable force, such of the decisions concerning the child or young person as are within the understanding of the child or young person:

40 “(d) The principle that such a child or young person is entitled, unless this Act otherwise expressly requires or unless it is impracticable, to participate, to the degree appropriate to the maturity of the child or young person, in decisions that affect the child or young person and the conditions of the life of the
45 child or young person.

“(2) Where a child or young person has been removed from a family group of the kind described in **section 4A (1)** of this Act or has otherwise ceased to live in association with a family group of that kind, **subsection (1)** of this section shall not apply in respect of that child or young person if the Court which or the person who is exercising the power is satisfied that that child or young person is living in association with a new family group and has formed a significant psychological attachment to at least one adult member of that group, being a psychological attachment that has effectively replaced any attachment that formerly existed between that child or young person and an adult member of the family group from which the child or young person was removed or in which the child or young person lived formerly.

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“(3) This section shall not apply where the power to which section 4 of this Act is being applied is being exercised—

“(a) By reason of an offence committed by the child or young person; or

“(b) Following the making of a complaint under section 27 (2) (i) of this Act in respect of the child; or

“(c) Following the arrest of the child or young person.

“**4c. Application of principles in respect of child or young person in guardianship or custody of Director-General**—Where the Director-General exercises, in respect of any child or young person who, pursuant to this Act, is in the guardianship or custody of the Director-General, any power conferred by this Act, the provisions of **section 4B** of this Act shall *(not apply, in relation to the application of section 4 of this Act to the exercise of that power, to the extent (but only to the extent) that)* apply, in relation to the application of section 4 of this Act to the exercise of that power, unless the Director-General is satisfied that—

“(a) That child or young person needs to be removed from any possible contact with an adult whose association is harmful to that child or young person; or

“(b) The immaturity of that child or young person makes the application of any of the principles set out in **section 4B** of this Act inappropriate; or

“(c) That child or young person has a mental or psychological condition which requires a form of treatment that can only reasonably be provided in a facility that cannot comply with the principles set out in **section 4B** of this Act; or

“(d) The behaviour of that child or young person—

“(i) Is unacceptable in the local community of that child or young person for a child or, as the case may be, a young person, of his cultural background; and

“(ii) Needs to be modified if it is to conform to a minimal standard acceptable to the local community of that child or young person; and

“(iii) Would not be modified appropriately if all of the principles set out in **section 4B** of this Act were applied; or

“(e) That child or young person has particular educational needs that cannot be met in the local community.”

4. Warrants—Section 7 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) It is the duty of everyone executing any warrant issued under this section—

“(a) To have it with him; and

“(b) To produce it on initial entry and, if requested, at any subsequent time.”

5. Warrant to remove child or young person—Section 28 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) It is the duty of everyone executing any warrant issued under this section—

“(a) To have it with him; and

“(b) To produce it on initial entry and, if requested, at any subsequent time.”

6. Special provisions in respect of children or young persons alleged to be neglected or ill-treated—(1) The principal Act is hereby amended by inserting, after section 29, the following section:

“29A. (1) Where—

“(a) A complaint made under section 27 of this Act is made on any of the grounds set out in paragraph (a) or paragraph (b) or paragraph (c) of subsection (2) of that section; and

“(b) The Court is satisfied that, but for the failure of the evidence to establish that a parent or guardian of the child or young person or a person having the care of the child or young person is culpable in relation to the harm suffered by the child or young person, the grounds of the complaint are proved,—

the Court may, subject to **subsection (2)** of this section, find those grounds proved.

“(2) **Subsection (1)** of this section shall not apply if a person to whom the summons is addressed or any parent or guardian of the child or young person or any person having the care of the child or young person satisfies the Court—

“(a) That the kind of harm suffered by the child or young person will neither continue nor be repeated; and

“(b) That a parent or guardian or other person having the care of the child or young person will be capable of ensuring that the kind of harm suffered by the child or young person will be neither continued nor repeated.”

(2) This section shall come into force on the date on which this Act receives the Governor-General’s assent.

7. Orders of the Court on complaints—(1) Section 31 (1) of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Make either—

“(i) An order appointing the Director-General guardian of the child or young person to whom the complaint relates; or

“(ii) An order placing the child or young person to whom the complaint relates under the supervision of the Director-General for a period specified by the Court in the order, being a period not exceeding 3 years and not extending beyond the child or young person’s seventeenth birthday.”

(2) Section 31 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsection:

“(6) Where an order made under subsection (3) of this section contains a direction placing the child or young person in the custody of the Director-General, he shall, during the period of postponement (including all extensions of it), have the same powers and responsibilities in all respects as if the child or young person had been made the subject of a custody order in his favour under section 11 of the Guardianship Act 1968.”

8. Young persons charged with offences—(1) Section 36 (1) of the principal Act is hereby amended by repealing paragraph (i), and substituting the following paragraph:

“(i) Make either—

“(i) An order appointing the Director-General guardian of the young person; or

“(ii) An order placing the young person under the supervision of the Director-General for a period specified by the Court in the order, being a period not exceeding 3 years and not extending beyond the young person’s seventeenth birthday.”

(2) Section 36 of the principal Act is hereby amended by repealing subsection (9), and substituting the following subsection:

5 “(9) Where an order made under subsection (6) of this section contains a direction placing the young person in the custody of the Director-General, he shall, during the period of postponement (including all extensions of it), have the same powers and responsibilities in all respects as if the young person had been made the subject of a custody order in his favour
10 under section 11 of the Guardianship Act 1968.”

9. Rights of person before Court—The principal Act is hereby amended by repealing section 40, and substituting the following section:

15 “40. When any person, being a child or young person or a parent or guardian of a child or young person or any person having the care of a child or young person, appears before a Court,—

“(a) The Court—

20 “(i) Shall satisfy itself that he understands the proceedings; and

“(ii) Shall, if necessary, explain to him in simple language the nature of the proceedings and of any allegations against him, including their legal implications, such as the existence of an intention
25 on his part to do an act that constitutes an offence or to bring about by his acts a certain result that constitutes an offence or both, but no particular form of words shall be necessary; and

“ (b) Representations may be made on his behalf—

30 “(i) By the person himself; or

“(ii) By a barrister or solicitor; and

“ (c) Representations on his behalf may be received by the Court from any person.”

10. Custody of child or young person before disposal of
35 **complaint or following arrest**—(1) Section 43 (1) of the principal Act (as substituted by section 10 of the Children and Young Persons Amendment Act 1982) is hereby amended by inserting, after the word “not,”, the words “or is arrested by any lawful authority under any Act,”.

40 (2) Section 43 (2) of the principal Act (as so substituted) is hereby amended—

(a) By omitting the words “for any offence”;

(b) By adding to paragraph (b) (iii) the words “having jurisdiction in the matter in relation to which he was
45 arrested”.

(3) Section 43 of the principal Act (as so substituted) is hereby amended by repealing subsection (5), and substituting the following subsection:

“(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,— 5

“(a) In the case of a young person arrested for an offence, he is brought before a Children and Young Persons Court to answer the charge; or

“(b) In the case of a child arrested for an offence, 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 15

“(c) In any other case, the child or young person is brought before a Court having jurisdiction in the matter in relation to which he was arrested; or

“(d) The expiry of a period of 3 days after the day on which the child or young person was arrested— 20
whichever first occurs.”

11. Secure care and discipline of child or young person in custody before disposal of complaint or following arrest—The principal Act is hereby amended by inserting, after section 43 (as substituted by section 10 of the Children and Young Persons Amendment Act 1982 and amended by section 10 of this Act), the following section: 25

“43A. Placement of a child or young person in the custody of the Director-General under section 43 (2) of this Act or an order made under section 43 (6) of this Act in relation to a child or young person shall be sufficient authority for the Director-General— 30

“(a) To contain the child or young person in an institution established pursuant to section 69 of this Act, which containment may be by such physical means as are— 35

“(i) Reasonable in the circumstances; and

“(ii) Permitted by regulations made under this Act:

“(b) To use such means to discipline the child or young person as are— 40

“(i) Reasonable; and

“(ii) Within the limits permitted by regulations made under this Act.”

12. New sections substituted—(1) The principal Act is hereby amended by repealing section 46, and substituting the following sections: 45

“45A. Duty of Director-General to provide for supervision—(1) Where any young person is placed under the supervision of the Director-General, he shall from time to time appoint—

5 “(a) A Social Worker; or

“(b) Some other person or organisation—

to supervise the young person on behalf of the Director-General.

10 “(2) Where any child is placed under the supervision of the Director-General, he shall from time to time appoint—

“(a) A Social Worker; or

“(b) Some other person or organisation,—

to supervise the child on behalf of the Director-General and to monitor the standard of care being received by the child.

15 **“46. Conditions of supervision order—**(1) Where any young person is placed under the supervision of the Director-General, the following conditions shall apply:

20 “(a) The Social Worker or person or organisation under whose supervision he is may, at all reasonable times, visit and enter the building or place in which the young person is living:

25 “(b) The young person shall report to the Social Worker or person or organisation under whose supervision he is, as and when he is required to do so by the Social Worker or person or representative of the organisation:

“(c) The young person shall not reside at an address that is not approved by the Social Worker or person or organisation under whose supervision he is:

30 “(d) The young person shall not continue in any employment or continue to engage in any occupation, that is not approved by the Social Worker or person or organisation under whose supervision he is:

35 “(e) The young person shall ensure that the officer in charge of the local office of the Department knows at all times of the address at which the young person is residing for the time being:

40 “(f) The young person shall not associate with any specified person, or with persons of any specified class, with whom the Social Worker or person or organisation under whose supervision he is has, in writing, warned him not to associate.

“(2) Where any child is placed under the supervision of the Director-General, the following conditions shall apply:

45 “(a) The Social Worker or person or organisation under whose supervision he is may, at all reasonable times, visit and enter the building or place in which the child is living:

- “(b) The child shall report to the Social Worker or person or organisation under whose supervision he is, as and when he is required to do so by the Social Worker or person or representative of the organisation: 5
- “(c) The child shall not reside at an address that is not approved by the Social Worker or person or organisation under whose supervision he is:
- “(d) The parents or guardian or person having the care of the child shall ensure that the officer in charge of the local office of the Department knows at all times of the address at which the child is residing for the time being. 10

“47. Power of Court to impose additional conditions—

- (1) The Court, in placing a young person under the supervision of the Director-General, may in its discretion impose any or all of the following conditions: 15

- “(a) That the young person shall, within such period and by such instalments as may from time to time be directed by the Social Worker or person or organisation under whose supervision he is, pay the whole or such portion as the Court may direct of the costs of the prosecution in relation to the offence or offences for which the young person is placed under supervision: 20 25
- “(b) That the young person shall, within such period and by such instalments as may from time to time be directed by the Social Worker or person or organisation under whose supervision he is, pay, by way of damages for injury or compensation for loss suffered by any person through or by means of any such offence as aforesaid, such sums as the Court may direct or as may be fixed by the Social Worker or person or organisation, under direction of the Court, not exceeding in any case a sum specified by the Court: 30 35
- “(c) That the young person shall not own or drive a motor-cycle or any other kind of motor vehicle:
- “(d) That the young person shall not associate with any specified person or with persons of any specified class: 40
- “(e) That the young person shall undergo any specified medical examination and treatment or any specified psychological or psychiatric examination, counselling, and therapy: 45

“Provided that no such treatment or therapy shall be carried out without the consent of the young person or of any person entitled to consent on his behalf:

5 “(f) Such conditions relating to the young person’s place of residence, employment, or earnings as the Court thinks fit:

10 “(g) That the young person attend and remain at, for such weekday, evening, and weekend hours each week and for such number of months as the Court thinks fit, any specified centre which is approved by the Department and which conducts educational, recreational, instructional, cultural, or work programmes, or sporting activity, and reasonably and effectively take part in such activity as may be required by the person in charge of the centre:

15 “(h) That the young person reasonably and effectively undertake work in the interests of the community for such period as the Court thinks fit under the supervision of an organisation approved by the Director-General, either generally or in the particular case:

20 “(i) Such other conditions as the Court thinks necessary for ensuring the young person’s good conduct or for preventing the commission by the young person of any offence.

25 “(2) The Court, in placing a child or young person under the supervision of the Director-General, may in its discretion impose, in addition to any other conditions that may be imposed, a condition that the child or young person undertake such remedial education, such training, or such community activities as are considered by the Court to be in the interests of that child or young person.

30 “(3) The Court, in placing a child under the supervision of the Director-General, may in its discretion impose, in addition to any other conditions that may be imposed, any of the conditions referred to in paragraphs (d) to (i) of subsection (1) of this section.”

35 (2) Section 14 of the Children and Young Persons Amendment Act 1977 is hereby consequentially repealed.

40 **13. New sections substituted**—The principal Act is hereby amended by repealing section 49, and substituting the following sections:

“49. Effect of appointment of Director-General as guardian—(1) When the Court makes an order, pursuant to section 31 or section 36 of this Act, appointing the Director-General guardian of a child or young person—

“(a) The Director-General shall be the guardian of that child 5
or young person as if he had been appointed
pursuant to section 8 of the Guardianship Act 1968;
and

“(b) Except to the extent that they are preserved by this 10
Act,—

“(i) All of the rights, powers, and duties of every 15
other person who is a guardian of that child or
young person or who may become a guardian
during the time when the Director-General is the
guardian shall be suspended and shall have no effect;
and

“(ii) If that child or young person is, at the time 20
of the making of the order, under the guardianship
of the High Court by virtue of an order made under
section 9 (1) of the Guardianship Act 1968, that
guardianship shall, subject to **subsection (8)** of this
section, be suspended during the time when the
Director-General is the guardian; and

“(c) For the purposes of section 22L (1) of the Guardianship 25
Act 1968, the order shall constitute an order with
respect to the custody of the child or young person,
and the Director-General shall be a person having
rights of custody in relation to the child or young
person pursuant to the order.

“(2) Any guardianship order shall be sufficient authority for 30
any member of the Police or any Social Worker or any other
person authorised in that behalf by the Director-General to
take the child or young person to whom the order relates to
such residence as the Director of Social Welfare for the district
in which the Court is situated may direct, and to use such force 35
as is reasonably necessary for that purpose.

“(3) Subject to **section 4b** of this Act, the Director-General may,
in his discretion, transfer a child or young person from any
residence under this Act to any other residence under this Act.

“(4) Subject to **section 4b** of this Act, where any child or young 40
person is under the guardianship of the Director-General or
in his custody by order made under this Act by a Court, any
Social Worker, acting with the specific or general authority of
the Director-General, may arrange placement of the child or
young person— 45

“(a) In any residence:

“(b) In foster care:

“(c) In any school or other institution that provides care or training or physical or mental health care:

“(d) In employment.

5 “(5) Subject to **section 4a** of this Act, any Social Worker, acting with the specific or general authority of the Director-General, may at any time cancel any arrangement made under **subsection (4)** of this section and, after any such cancellation, may remove the child or young person to a residence or to such other place as the Social Worker may decide, using force if necessary.

10 “(6) The guardianship order may be discharged by the Director-General at any time before it ceases to have effect under **subsection (7)** of this section, if the Director-General is satisfied that it is in the interests of the child or young person and consistent with the public interest to do so.

15 “(7) A guardianship order shall cease to have effect when—

“(a) The young person to whom it relates attains the age of 20 years or sooner marries:

“(b) The child or young person to whom it relates is adopted by any person other than his parent.

20 “(8) A guardianship order shall cease to have effect if, after it is made, the High Court—

“(a) Orders, under section 9 (1) of the Guardianship Act 1968, that the child or young person to whom the guardianship order relates be placed under the guardianship of the High Court; or

25 “(b) Orders, where that child or young person was, at the time of the making of the guardianship order under the guardianship of the High Court by virtue of an order made under section 9 (1) of the Guardianship Act 1968, that that child or young person shall
30 continue to be under the guardianship of the High Court.

“(9) Where a child or young person is discharged from the guardianship of the Director-General, all the powers and rights
35 of guardianship shall revert to the person who would have been his guardian if he had never been placed under the guardianship of the Director-General unless some other person has in the meantime become entitled to guardianship by virtue of an order made under the Adoption Act 1955 or the
40 Guardianship Act 1968, in which case guardianship shall revert to the person so entitled.

“49AA. **Secure care and discipline**—Where the Court makes an order, pursuant to section 31 or section 36 of this Act, appointing the Director-General guardian of a child or
45 young person, that order shall be sufficient authority for the Director-General—

- “(a) To contain the child or young person in an institution established pursuant to section 69 of this Act, which containment may be by such physical means as are both—
- “(i) Reasonable in the circumstances; and 5
 - “(ii) Permitted by regulations made under this Act:
- “(b) To use such means to discipline the child or young person as are both—
- “(i) Reasonable; and
 - “(ii) Within the limits permitted by regulations 10 made under this Act.

“49AB. **Search without warrant**—(1) For the purpose of exercising the powers conferred by **subsection (2) or subsection (5) of section 49** of this Act in respect of any child or young person, any member of the Police or any Social Worker or any other person authorised in that behalf by the Director-General may, without a warrant, enter and search, by force if necessary, any dwellinghouse, building, aircraft, ship, carriage, vehicle, premises, or place, and remove the child or young person. 15 20

“(2) Every member of the Police, Social Worker, or other person exercising the powers conferred by **subsection (1)** of this section—

- “(a) Shall identify himself to any person in or on the dwellinghouse, building, aircraft, ship, carriage, vehicle, premises, or place who questions his right to enter and search the same or to remove the child or young person; and 25
- “(b) Shall tell any person who questions his right to enter and search the dwellinghouse, building, aircraft, ship, carriage, vehicle, premises, or place or to remove the child or young person that the powers are being exercised pursuant to the authority of **subsection (1)** of this section; and 30
- “(c) If he is a member of the Police who is not in uniform, shall produce evidence that he is a member of the Police; and 35
- “(d) If he is a Social Worker, shall produce evidence that he is a Social Worker; and
- “(e) If he is a person (not being a member of the Police or a Social Worker) authorised by the Director-General to exercise the powers conferred by **subsection (1)** of this section, shall produce his authority from the Director-General.” 40

14. Power of inspection—(1) Section 81 (1) of the principal Act is hereby amended by inserting, after the word “time”, the words “that is reasonable in the circumstances”.

(2) Section 81 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“**(2A)** It is the duty of every Social Worker who enters any foster home or premises pursuant to **subsection (1)** of this section—

“(a) To have with him evidence both of his identity and of his appointment as a Social Worker; and

“(b) To produce on initial entry, and at any subsequent time, if requested, the evidence of his identity and of his appointment as a Social Worker.”

15. Regulations—Section 105 (1) of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraphs:

“(da) Defining the rights of children and young persons placed in any institution established pursuant to section 69 of this Act:

“(db) Limiting the powers of the staff of any institution established pursuant to section 69 of this Act to confine, punish, or discipline the children or young persons placed in the institution:”.

16. Transitional provisions—Every order made under the principal Act before the commencement of this Act shall—

(a) If it places a child or young person under the guardianship of the Director-General and is in force on the 31st day of December 1983, be deemed to be an order appointing the Director-General guardian of the child or young person; and

(b) If it places a child or young person under the supervision of a Social Worker and is in force on the 31st day of December 1983, be deemed to be an order placing the child or young person under the supervision of the Director-General.