

CHILD WELFARE AMENDMENT BILL

EXPLANATORY NOTE

THE purpose of this Bill is to provide a right of appeal to the Supreme Court against decisions of a Children's Court. It has recently been decided by the Supreme Court (*Ayers v. The Queen* [1959] N.Z.L.R. 1191) that the effect of a provision in the Summary Proceedings Act 1957 is to take away any right of appeal to the Supreme Court against a decision of the Children's Court. This Bill makes it clear that such a right of appeal exists.

In order to give such a right of appeal, *clause 2* inserts a new Part IVA in the principal Act comprising *sections 34A to 34L*.

Section 34A declares that for the purposes of the new Part IVA the term "child" includes a person dealt with under section 32 of the principal Act. That section enables a child who is 17 years of age to be dealt with in a Children's Court. Apart from that section, the jurisdiction of the Court is limited to persons under 17 years of age and persons over that age who are charged jointly with persons under 17 years of age or are charged with offences against children.

Section 34B confers on a child dealt with in a Children's Court a general right of appeal to the Supreme Court. The appeal may be against a finding that a charge of any offence against the child has been proved or against any sentence or order based on such a finding or against both the finding and any such sentence or order. The section also confers on a child a right of appeal against an order committing him to the care of the Superintendent of Child Welfare or placing him under the supervision of a Child Welfare Officer.

Section 34C confers on any parent or guardian or person acting in the place of a parent of a child dealt with in a Children's Court a general right of appeal to the Supreme Court against a decision of the Children's Court committing the child to the care of the Superintendent or placing the child under the supervision of a Child Welfare Officer. The section also confers a right of appeal in any case where a Children's Court makes an order under section 24 (2) of the Child Welfare Amendment Act 1927 ordering any parent to pay any costs or damages incurred by or through an offence committed by a child.

Section 34D confers on persons other than children dealt with by a Children's Court (i.e., persons charged jointly with children or charged with offences against children) a general right of appeal to the Supreme Court.

Section 34E confers a right of appeal to the Supreme Court from a decision of a Children's Court on a question of law only. Such an appeal may be made by any person who has a general right of appeal against that decision under *section 34B* or *section 34C* or *section 34D* and also by the informant or complainant.

Section 34F applies, with appropriate modifications, the provisions of Part IV of the Summary Proceedings Act 1957 to appeals to the Supreme Court against decisions of a Children's Court.

Section 34G provides that the operation of an order of a Children's Court committing a child to the care of the Superintendent, or placing a child under the supervision of a Child Welfare Officer and providing that the child is to be detained in an institution, is not suspended pending the hearing of an appeal against the order, unless the Magistrate or Justice presiding over the Court making the order, or, if he is not available, some other Magistrate or Justice exercising jurisdiction in a Children's Court, otherwise orders.

Section 34H provides that proceedings in the Supreme Court on appeal from a Children's Court are not open to the public.

Section 34I defines the cases in which a child affected by an appeal who is in the care of the Superintendent or detained in an institution under the decision appealed against is entitled to be present in the Supreme Court on the hearing of the appeal. In any case, whether or not the child is in the care of the Superintendent or is detained in an institution, the Supreme Court may order that the child be present at the appeal.

Section 34J empowers the Supreme Court on any appeal from a Children's Court to require the parent or guardian of the child, or any person acting in place of a parent, to attend at the Supreme Court at the hearing of the appeal. The Supreme Court may examine him in respect of the upbringing and control of the child.

Section 34K requires notification of an appeal and of the result of an appeal to be sent to the Superintendent.

Section 34L provides that no Court costs are to be paid in respect of any appeal from a decision of a Children's Court.

Clause 3 confers a right of appeal to the Supreme Court against decisions of a Children's Court finding a charge of an offence proved against any person given after the date of the commencement of the Summary Proceedings Act 1957 and before the date of the commencement of the Bill. Where that person has been sentenced or otherwise dealt with by the Children's Court, the right of appeal to the Supreme Court may be exercised as if he had been sentenced or otherwise dealt with by the Children's Court on the date of the commencement of the Bill.

Where that person is a child as defined in the new *section 34A* and the date of the finding was more than one month before the commencement of the Bill, but he was not then sentenced or otherwise dealt with by the Children's Court, he may appeal to the Supreme Court under the provisions of the new *section 34B (2)* as if the finding had been made on the date one month before the commencement of the Bill.

All appeals commenced but not determined by the Supreme Court before the date of commencement of the Bill are to be heard and determined by the Court as if the Bill had been in force when the notice of appeal was given.

No further right of appeal is given to any person whose appeal to the Supreme Court from a decision of a Children's Court has already been decided on the merits.

Hon. Miss Howard

CHILD WELFARE AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Child Welfare Act 1925

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

1. **Short Title and commencement**—(1) This Act may be cited as the Child Welfare Amendment Act 1960, and shall be read together with and deemed part of the Child Welfare Act 1925* (hereinafter referred to as the principal Act).
- 10 (2) This Act shall come into force on the first day of December, nineteen hundred and sixty.

*1957 Reprint, Vol. 2, p. 1
Amendment: 1958, No. 52

2. Appeal against decision of Children's Court—The principal Act is hereby amended by inserting, after Part IV, the following new Part:

“PART IVA

APPEAL FROM DECISION OF CHILDREN'S COURT 5

“34A. Interpretation—In this Part of this Act the term ‘child’ includes any person dealt with by a Children's Court under section 32 of this Act.

“34B. Appeal by child—(1) Where a Children's Court finds a charge of any offence proved against any child, the child may appeal to the Supreme Court against the finding or against any sentence or order of the Children's Court based on that finding or against both the finding and any such sentence or order. 10

“(2) No appeal against any such finding may be brought until the child has been sentenced or otherwise dealt with: 15

“Provided that, where the child is not sentenced or otherwise dealt with within one month after the date of the finding, an appeal against the finding may be brought under subsection (1) of this section as if he had been sentenced or otherwise dealt with at the expiration of one month after the date of the finding: 20

“Provided further that, where in any case to which the first proviso to this subsection applies the child has not appealed against the finding in accordance with that proviso, he may appeal against the finding after he has been sentenced or otherwise dealt with. 25

“(3) Where on the hearing of any complaint an order is made committing any child to the care of the Superintendent or placing any child under the supervision of a Child Welfare Officer, the child may appeal to the Supreme Court against the order. 30

“34c. Appeal by parents—(1) Where—

“(a) On the hearing of any charge against a child a Children's Court makes an order committing him to the care of the Superintendent or an order placing him under the supervision of a Child Welfare Officer and providing that the child is to be detained in an institution for any period; or 35

“(b) On the hearing of any complaint in respect of a child a Children’s Court makes an order committing him to the care of the Superintendent or an order placing him under the supervision of a Child Welfare Officer (whether or not the order provides that the child is to be detained in an institution for any period),—

5 any parent or guardian of the child, or any person who has been acting in the place of a parent, may appeal to the Supreme Court against the order.

“(2) Where pursuant to subsection (2) of section 24 of the Child Welfare Amendment Act 1927 any parent of a child is ordered to pay any costs or damages incurred by or through any offence committed by the child, the parent may appeal to the Supreme Court against the order.

“**34D. Appeal by persons other than children dealt with in Children’s Court**—(1) Any person, other than a child, who is convicted in a Children’s Court of any offence may appeal to the Supreme Court against the conviction or against any sentence of the Children’s Court based on the conviction or against both the conviction and any such sentence.

“(2) No appeal against the conviction may be brought under this section until the person convicted has been sentenced or otherwise dealt with.

25 “**34E. Appeal on a point of law only**—Where any charge or complaint has been determined by a Children’s Court, any person who under section 34B or section 34C or section 34D of this Act is entitled to appeal against the determination and the informant or the complainant, as the case may be, may, if dissatisfied with the determination as being erroneous in point of law, appeal to the Supreme Court by way of case stated for the opinion of that Court on a question of law only.

35 “**34F. Application of Part IV of Summary Proceedings Act 1957**—(1) Subject to the provisions of this Part of this Act, the provisions of Part IV of the Summary Proceedings Act 1957 (including the other provisions of that Act which are applied in that Part), as far as they are applicable and with the necessary modifications,—

40 “(a) So far as they relate to general appeals, shall apply with respect to every appeal under section 34B or section 34C or section 34D of this Act:

“(b) So far as they relate to appeals on points of law only by way of case stated, shall apply with respect to every appeal under section 34E of this Act.

“(2) In the application of the provisions of the said Part IV as aforesaid, those provisions shall be read as if— 5

“(a) References to a Magistrate’s Court were references to a Children’s Court; and

“(b) The Registrar of the Magistrate’s Court nearest to the Children’s Court in which the case was heard and determined were the Registrar of that Children’s Court; and 10

“(c) References to a Magistrate or Justice or Justices (except the reference thereto in section 50 of the Summary Proceedings Act 1957, the first reference thereto in section 54 of that Act, the first reference thereto in subsection (2) of section 125 of that Act, and the first reference thereto in section 126 of that Act) were references to a Magistrate or Justice exercising jurisdiction in a Children’s Court. 15

“**34G. Effect of notice of appeal on committal order or supervision order with detention—**(1) The operation of any order committing a child to the care of the Superintendent, or of any order placing a child under the supervision of a Child Welfare Officer and providing that the child is to be detained in an institution for any period, shall not be affected by the filing of a notice of appeal relating to the order, unless the Magistrate or Justice who presided over the Court making the order or, if that Magistrate or Justice is not available, some other Magistrate or Justice exercising jurisdiction in a Children’s Court, on application by the appellant, directs that the operation of the order shall be suspended pending the determination of the appeal. Notice of any application or direction under this subsection shall be given by the Registrar to the Superintendent. 20 25 30

“(2) Where a direction is given under subsection (1) of this section in respect of any order placing a child under the supervision of a Child Welfare Officer, the term of the order shall cease to run from the date of the direction or, if the child is then detained in an institution, from the day the child is released pursuant to the direction. 35 40

“34H. Proceedings not open to public—The provisions of section 30 of this Act, with the necessary modifications, shall apply to the hearing in the Supreme Court of any appeal against a decision of a Children’s Court.

5 **“34I. Presence of child at hearing of appeal—**(1) On the hearing of any appeal relating to an order committing a child to the care of the Superintendent or placing a child under the supervision of a Child Welfare Officer and provid-
10 ing that the child is to be detained in an institution for any period, not being an appeal on a question of law only, the child, if he is then under the care of the Superintendent or is detained in an institution pursuant to the order, shall be entitled to be present unless the Supreme Court otherwise directs.

15 **“(2)** On the hearing of any such appeal on a question of law only, the child, if he is then under the care of the Superintendent or detained in an institution pursuant to the order, shall not be entitled to be present except with the leave of the Supreme Court.

20 **“(3)** Where under this section a child is entitled to be present in the Supreme Court on the hearing of any appeal, the person having custody of him may, without further authority than this subsection, cause him to be taken to the Supreme Court for the hearing.

25 **“(4)** Where any appeal relating to a child is made under this Part of this Act, the Supreme Court may order that the child shall be present at the hearing. If the child fails to attend in accordance with the order, any constable or Child Welfare Officer may, without further authority than the order,
30 bring him before the Court.

“34J. Presence of parents at hearing of appeal—(1) Where any appeal relating to a child is made under this Part of this Act, the Supreme Court may order that any parent or guardian of the child, or any person who has been acting in
35 the place of a parent, shall be present at the hearing, and may further order that that parent, guardian, or other person shall bring the child with him; and the Registrar of that Court shall notify every person so ordered to be present of the time and place at which he is required to attend.

40 **“(2)** If any person fails to attend at the Supreme Court in accordance with an order made under subsection (1) of this section, the Court may issue a warrant to arrest him and bring him before the Court.

“(3) At the hearing of any appeal under this Part of this Act relating to a child, any parent or guardian of the child, or any person who has been acting in the place of a parent, may be examined in respect of the upbringing and control of the child.

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“**34K. Notification of appeal and result of appeal to Superintendent**—(1) Where any appeal under this Part of this Act relates to an order committing a child to the care of the Superintendent or placing a child under the supervision of a Child Welfare Officer, an additional copy of the notice of appeal shall be filed, and the Registrar shall forthwith deliver or post that copy to the Superintendent.

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“(2) Where the decision of the Supreme Court on any such appeal has been given, the Registrar of the Supreme Court shall send to the Superintendent a certificate setting out the result of the appeal.

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“(3) Where under section 107 of the Summary Proceedings Act 1957 (as applied to appeals under this Part of this Act) a Magistrate or Justice has certified that any such appeal has not been prosecuted, the Registrar of the Magistrate’s Court shall send that certificate to the Superintendent. Where any such appeal has been dismissed for non-prosecution, the Registrar of the Supreme Court shall send a certificate to that effect to the Superintendent.

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“**34L. No Court fees payable on appeals**—No Court fees shall be payable in any Court in respect of any appeal under this Part of this Act.”

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3. Right of appeal from decision of Children’s Court before commencement of this Act—(1) Where, after the first day of April, nineteen hundred and fifty-eight (being the date of the commencement of the Summary Proceedings Act 1957), and before the date of the commencement of this Act, a Children’s Court has found a charge of any offence proved against any person, the provisions of this Act shall apply:

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Provided that—

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(a) Where that person has been sentenced or otherwise dealt with by the Children’s Court before the date of the commencement of this Act, the provisions of this Act shall apply as if he had been sentenced or otherwise dealt with on that date:

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- 5 (b) Where the date of the finding was more than one month before the date of the commencement of this Act and that person, being at the date of the finding a child within the meaning of Part IVA of the principal Act (as inserted by section 2 of this Act), has not been sentenced or otherwise dealt with by the Children's Court before the date of the commencement of this Act, the provisions of this Act shall apply as if the date of the finding were one month before
10 the date of the commencement of this Act.
- (2) Where before the date of the commencement of this Act any appeal has been made to the Supreme Court from a decision of a Children's Court but has not been determined by the Supreme Court, the appeal shall be heard and deter-
15 mined by the Supreme Court as if this Act had been in force when the notice of appeal was given.
- (3) Nothing in this section shall be deemed to confer on any person any further right of appeal to the Supreme Court from a decision of a Children's Court where before the
20 commencement of this Act an appeal to the Supreme Court against that decision has been determined by the Supreme Court on the merits.