

## CHILDREN'S PROTECTION ACT, 1936.

No. 2279 of 1936.

An Act to consolidate certain Acts relating to the protection and punishment of children.

[Assented to 3rd September, 1936.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

**Short title.**        **1.** This Act may be cited as the "Children's Protection Act, 1936".

**Commencement.**        **2.** This Act shall come into operation on a day to be fixed by proclamation.

**Consolidation and repeal.**        **3.** This Act is a consolidation of the Acts mentioned in the schedule, and the said Acts are hereby repealed to the extent therein mentioned.

**Interpretation.**        **4.** In this Act, unless some other meaning is clearly intended—

"board" means the Children's Welfare and Public Relief Board :

"child" means a boy or girl under the age, or apparent age, of sixteen years :

"institution" means an institution within the meaning of the Maintenance Act, 1926 :

"near relative" includes as regards—

(a) a legitimate child—any parent, grandparent, step-father, or stepmother of the child :

(b) an illegitimate child—the mother, husband of the mother, and the father of the child :

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s. 2. This Act was proclaimed to commence on 1st April, 1937: *Gazette* 11th February, 1937, p. 286.

“obscene publication” includes—

- (a) any book, pamphlet, magazine, newspaper, or document devoted to the publication, or composed to any considerable extent of or giving special prominence to criminal news, police reports, or accounts, stories, or pictures of lust or crime :
- (b) any drawing, picture, or written or printed matter of an indecent, obscene, or immoral nature :

“parent” of a child means the person who has the actual custody of the child, whether as father, mother, guardian, or otherwise howsoever, or with whom the child resides :

“promoter” of a public entertainment includes the person, company or association having the superintendence or management of the entertainment, and also includes the agent, trustee, manager or committee of any such person, company, or association respectively, and also includes any person responsible for the management of the entertainment :

“public entertainment” means entertainment (including, though without limiting the meaning of that term, concert, recital, lecture, entertainment of the stage, cinematograph or other public show, dancing, or other amusement) which is open to the public, whether admission thereto is or is not procured by payment of money or on any other condition :

“public place” includes every place used by the public, or to which the public resort, or have free access, or are admitted on the payment of money.

### *Protection of Children.*

5. Any near relative, guardian, or other person having the care, custody, control, or charge of a child, who, without lawful excuse—

- (a) neglects to provide all such food, clothing, and lodging for the child as to the court seems reasonably sufficient :
- (b) ill-treats, neglects, abandons, or exposes the child, or causes the child to be ill-treated, neglected, abandoned, or exposed, in a manner which the court deems likely to subject the child to unnecessary risk, danger, injury, or suffering,

Penalty for neglect or ill-treatment of child.  
730, 1899, s. 4.

Cf. U.K. 23,  
Geo. 5, c. 12,  
s. 1.

shall be guilty of an offence against this Act and liable to imprisonment for any period not exceeding one year, and to a fine not exceeding one hundred pounds.

Power to issue warrant for removal of child being ill-used.  
730, 1899, s. 5.

6. If it appears to a special magistrate, from evidence upon oath, that there is reasonable cause for suspecting that a child is being ill-treated, neglected, abandoned, or exposed in a manner likely to subject the child to unnecessary risk, danger, injury, or suffering, the special magistrate may issue a warrant authorising a police constable or an officer of the board, to be therein named, to search for and remove the child to an institution, to be there detained until he can be brought before the court.

Power to enter buildings and places in search of child.  
730, 1899, s. 6.

7. Any person authorised by warrant under section 6 to remove any child with or without search, may enter, and if need be by force, any house, building, or other place specified in the warrant, or wherein or whereon the child may be or may reasonably be supposed to be, and search for and remove the child therefrom.

Power to admit and detain child.  
730, 1899, s. 7.

8. The superintendent, matron, or person in charge of any institution to which a child shall be taken for detention pursuant to this Act shall receive and detain the child accordingly.

Begging, etc., during prohibited hours.  
730, 1899, ss. 8 and 13.

9. Any child, being under the age of thirteen years, who is in a public place, other than the child's home, at any time during the prohibited hours, in the act or for the purpose of selling any article or thing, or begging or receiving alms, shall be guilty of an offence against this Act and liable to a penalty not exceeding five pounds.

Prohibited hours.  
730, 1899, s. 9.

10. For the purposes of section 9 the prohibited hours shall be from eight o'clock in the evening till five o'clock of the following morning, at any time between the thirty-first day of March and the first day of October, and during any other period of the year, from nine o'clock in the evening to five o'clock of the following morning.

Penalty for placing immoral documents before children.  
730, 1899, s. 10.

11. Any person who—

- (a) sells, lends, or gives, or offers to sell, lend, or give to any child; or
- (b) in any manner employs or hires any child to exhibit, sell, give away, or in any manner distribute;
- (c) having the custody or control of any child, permits him or her to exhibit, sell, give away, or in any manner distribute,

an obscene publication, shall be guilty of an offence against this Act and liable to imprisonment for any period not exceeding six months, and to a fine not exceeding fifty pounds.

**12.** (1) No child under the age of six years shall take part in any public entertainment or be employed in connection with any public entertainment.

Children under six taking part in public entertainment.  
1934, 1918, a. 3. (part).  
Cf. U.K., 23, Geo. 5, c. 12, s. 22.

(2) If any breach of subsection (1) occurs the promoter of the public entertainment in connection with which the breach takes place, and also the parent of the child concerned in the breach shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds for a first offence and not exceeding twenty pounds for any subsequent offence.

(3) This section shall not apply to any child taking part in, or employed in connection with any public entertainment in aid of any charitable, religious, educational, or patriotic object, if the services of the child are entirely gratuitous.

**13.** Any person who employs or engages any child under the age of thirteen years in any circus, or acrobatic entertainment, or exhibition by which his or her life, health, or safety is likely to be lost, prejudiced, or endangered, shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty pounds, or to imprisonment for any period not exceeding six months.

Penalty for employment of children under thirteen years of age in circus.  
1780, 1926, s. 19d.  
Cf. U.K., 23, Geo. 5, c. 12, s. 23.

**14.** Any person who sells, lends, or gives, or offers to sell, lend, or give, to any child actually or apparently under the age of sixteen years any tobacco, cigar, or cigarette, shall be guilty of an offence against this Act and liable to a penalty not exceeding five pounds.

Persons supplying tobacco, &c., to children.  
875, 1904, s. 2.  
Cf. U.K., 23, Geo. 5, c. 12, s. 7.

*Punishment in certain cases.*

**15.** (1) If any male person under the age of sixteen years commits any of the offences following, that is to say—

Power to order whipping in certain cases.  
35, 1872, ss. 1 and 6.

- (a) if he is, in any road, street, thoroughfare, or public place, guilty of riotous or indecent conduct or behaviour, or of using indecent or obscene language, or of assaulting any woman, or female child :
- (b) if he exposes his person in any street, road, thoroughfare, or public place, or within view thereof :
- (c) if, in any street, road, thoroughfare, or public place, he sings any obscene song, or ballad, or place, write, or draws any indecent or obscene word, or figure, or representation :

- (d) if, in any street, road, thoroughfare, or public place, he wilfully throws, scatters, or places any deleterious drug or substance at, over, or upon any person, to the damage or danger of any person :
- (e) if he is convicted as a rogue and vagabond :
- (f) if he wantonly throws or discharges any stone or missile to the damage or danger of any person, after a previous conviction for a similar offence :
- (g) if he is guilty of placing any obstruction on railways, or of larceny from the person with violence, when the property stolen is of the value of five pounds or less,

the court lawfully having power to decide or adjudicate upon the charge against the offender may sentence him to be once or twice privately whipped, either in substitution for, or in addition to, any sentence with which by law the offender may be punished.

(2) In this section "public place" includes any public place or place of public resort within the meaning of the Police Act, 1936.

*Onus probandi*  
to be on  
defendant.  
35, 1872, s. 2.  
Cf. U.K., 23,  
Geo. 5, c. 12,  
s. 99.

16. (1) Whenever any person is charged before any court with committing any of the offences mentioned in section 15, and hereby made punishable, the onus of proving that the age of the person so charged exceeds sixteen years, shall in all cases lie on the person so charged.

(2) Unless the person so charged adduces such proof to the satisfaction of the court, he shall then, if found guilty of the offence wherewith he is charged, be liable to all the penalties and punishments by section 15 provided.

Power to order  
imprisonment  
to give time  
for whipping  
to be  
administered.  
35, 1872, s. 4.

17. In case any person is charged with, and found guilty of, any of the offences mentioned in section 15, and the Act under which the person has been charged provides only for the payment of a pecuniary penalty, and does not authorise the imprisonment of the offender, or authorises his imprisonment for a less period than fourteen days, the court before whom the person is charged and found guilty may order the person so found guilty to be imprisoned for any period not exceeding fourteen days for the purpose of enabling the sentence of whipping, by this Act authorised to be inflicted, to be carried out, anything in the Act under which such offence is charged to the contrary notwithstanding.

Mode of  
whipping.  
35, 1872, s. 4.

18. (1) The number of strokes at each such whipping shall not exceed twenty-five, and the instrument used shall be as nearly as may be similar to the birch rod used in England.

(2) The punishment shall be inflicted in the presence of a justice or an inspector of police.

(3) The court, in its sentence, shall specify the number of strokes to be inflicted.

*Miscellaneous Provisions.*

19. If in any proceeding under this Act or whenever the age of any child is in question the court or jury, on their own view and judgment, shall be satisfied that a child is under a certain age, the child shall be deemed to be under that age, unless the contrary be proved.

Presumption of age of child.  
730, 1899, s. 11.  
Cl. U.K., 23,  
Geo. 5, c. 12,  
s. 99.

20. It shall not be necessary in any oath, complaint, or warrant under section 6 to name the child, if the special magistrate considers the case one of extreme urgency, and that the name cannot readily be ascertained.

Procedure in urgent cases.  
730, 1899, s. 13.

21. All proceedings under or for offences against this Act shall be disposed of summarily.

Summary procedure.  
35, 1872, s. 5.  
780, 1899, s. 14.

ACTS CONSOLIDATED AND REPEALED.

Number and Year of Act.	Title or Short Title.	Extent of Repeal.
No. 35 of 1872 .....	An Act for the more effectual Punishment of Juvenile Offenders	The whole
No. 730 of 1899 .....	The Children's Protection Act, 1899	The whole, except section 12
No. 875 of 1904 .....	The Children's Protection Amendment Act, 1904	The whole
No. 1334 of 1918 .....	Children's Protection Act Amendment Act, 1918	The whole
No. 1780 of 1926 .....	Maintenance Act, 1926.....	Subsection (2) of section 196

**CIRCUIT COURTS**  
see Supreme Court.

**Acts of the Parliament of South Australia [electronic resource]**

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