



ANNO DECIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1966

No. 3 of 1966

An Act to consolidate and amend the law relating to the powers of courts to deal with neglected and uncontrolled children and with certain offences by young persons, and matters connected therewith, and for other purposes.

[Assented to 10th February, 1966.]

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

PART I. PRELIMINARY.

Short title.

1. This Act may be cited as the "Juvenile Courts Act, 1965-1966".

Commencement.

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

Repeals.

3. (1) The Juvenile Courts Act, 1941-1965, is repealed.
(2) The Act specified in the first column of the Schedule to this Act is amended as specified in the third column thereof and, as so amended, may be cited as specified in the second column thereof.

Arrangement.

4. This Act is arranged as follows:—

PART I.—PRELIMINARY, ss. 1-7.

PART II.—CONSTITUTION AND JURISDICTION
OF JUVENILE COURTS, ss. 8-13.

PART III.—GENERAL PROCEDURE AND POWERS OF COURTS, ss. 14-24.

PART IV.—SPECIAL PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CHARGES, ETC., ss. 25-43.

PART V.—PROVISIONS RELATING MAINLY TO NEGLECTED AND UNCONTROLLED CHILDREN, ss. 44-52.

PART VI.—APPEALS FROM AND RECONSIDERATION OF PENALTY BY JUVENILE COURTS, ss. 53-55.

PART VII.—GENERAL PROVISIONS, ss. 56-68.

THE SCHEDULE.

5. (1) In this Act, unless the context or subject matter or some other provision requires a different construction—

Interpretation.
cf. 13, 1941,
s. 3.

“child” means a child who has not attained the age of eighteen years; and, in the absence of positive evidence as to age, means a person apparently under the age of eighteen years:

“court” means the Supreme Court or any court of summary jurisdiction or any justice sitting to hold the preliminary examination on an information for an indictable offence:

“guardian”, in relation to a child, means a parent of the child or any person (other than the Minister) having the immediate custody and control of the child:

“homicide” includes the offences to which sections 11, 12, 13, 14, 14a, 16, 17 and 18 of the Criminal Law Consolidation Act, 1935-1965, relate:

“indictable offence” includes a minor indictable offence as defined in the Justices Act, 1921-1965:

“institution” means an institution as defined in the Social Welfare Act; but, in relation to proceedings in respect of a child pursuant to the Education Act, 1915-1965, means an institution as defined in section 48 of that Act:

“juvenile court” means a juvenile court as defined in section 8 of this Act ; and, for the purposes of section 6 of this Act, includes a court constituted as a juvenile court under the repealed Act :

“metropolitan area” means—

(a) that part of the State which is within ten miles of any part of the City of Adelaide or of the City of Port Adelaide ; and

(b) any other part of the State declared by proclamation to be included in the metropolitan area for the purposes of this Act :

“Minister” means Minister of Social Welfare :

“neglected child” means a neglected child as defined in the Social Welfare Act :

“parent” includes father, mother, step-father, step-mother and an adoptive parent within the meaning of the Social Welfare Act :

“reformatory institution” means a reformatory institution as defined in the Social Welfare Act and includes a private reformatory institution as defined in that Act :

“remand home” means a home within the meaning of the Social Welfare Act which is by proclamation under that Act set apart as an institution to be used as a remand home :

“repealed Act” means the Juvenile Courts Act, 1941-1965 :

“the department” means the Department of Social Welfare :

“the Director” means the person for the time being holding the office of Director of Social Welfare under the Social Welfare Act :

“the Social Welfare Act” means the Social Welfare Act, 1926-1965 :

“uncontrolled child” means an uncontrolled child as defined in the Social Welfare Act.

(2) In this Act, any reference to the Adelaide Juvenile Court shall be read as a reference to that court as constituted by a special magistrate.

**Transitional
and saving
provisions.**

6. (1) All proceedings commenced before courts that had been constituted as juvenile courts under the repealed Act and not finally heard and disposed of at the commencement of this Act shall be continued, heard and determined by those courts as so constituted as if this Act had not been enacted.

(2) All decisions, judgments and records of such courts shall continue to be decisions, judgments and records thereof.

(3) Such courts shall be held at such respective places and the sittings thereof shall take place on such days and during such periods as have been or shall be fixed in accordance with existing practice.

(4) Every order made by a juvenile court before the commencement of this Act and which at such commencement has not been complied with in full shall continue to be of full force and effect according to the tenor thereof.

(5) Where, before the commencement of this Act, notice of appeal has been given from any conviction by or from any order, determination or adjudication of a juvenile court or from any refusal by a juvenile court to make an order, and the appeal has not been heard and determined, the same shall be heard and determined as if this Act had not been enacted.

(6) Without limiting the application of the Acts Interpretation Act, 1915-1957, the provisions of that Act relating to the effect of repeals shall, except where inconsistent with this Act, apply and have effect to and in relation to the repeals enacted by this Act.

7. Where any Act, past or future, or any rule, regulation, proclamation or by-law made under or by virtue of such an Act provides that any order may be made or jurisdiction may be exercised by a juvenile court, such Act, rule, regulation, proclamation or by-law shall, unless the Act concerned otherwise provides, be deemed to provide that such order may be made or such jurisdiction may be exercised by a juvenile court constituted under this Act and the provisions of this Act shall for such purpose be deemed to be incorporated with that Act.

**Incorporation
with past and
future Acts.**

PART II.

CONSTITUTION AND JURISDICTION OF JUVENILE COURTS.

8. (1) Subject to the provisions of this Act, any court of summary jurisdiction, if constituted either of a special magistrate or of two justices chosen from a panel of justices prepared in accordance with the provisions of section 9 of this Act, shall, for the purposes of this Act, be a juvenile court.

**Juvenile
courts.
cf. 13, 1941,
s. 4.**

(2) Notwithstanding subsection (1) of this section, where, in the opinion of the clerk of the court of summary jurisdiction concerned, it is not reasonably practicable for the court to be constituted of a special magistrate or of two justices whose names are included in such panel, the court, if constituted of any two justices, may be a juvenile court.

Panel of justices for juvenile courts. cf. 13, 1941, s. 5.

9. (1) The Attorney-General shall prepare for the whole of the State a panel of justices containing the names and addresses of justices who are, in his opinion, specially qualified to hear and determine proceedings against or in respect of children.

(2) The Attorney-General may, from time to time, revise the panel of justices prepared under this section.

Juvenile court to be constituted of special magistrate when available. 13, 1941, s. 7.

10. If, at any place where it is desired to hold a juvenile court, there is a special magistrate who is able to act, such juvenile court shall be constituted of such special magistrate and not of two justices.

Place of sitting. cf. 13, 1941, s. 8; 1780, 1926, s. 100.

11. (1) So far as is reasonably practicable, a juvenile court shall not sit in any building while any court which is not a juvenile court is sitting therein.

(2) Every information, complaint, charge, summons or application referred to in section 12 of this Act, which is to be heard by a juvenile court within the metropolitan area, shall be heard only in such room or place as is, from time to time, appointed or approved of by the Minister for the purpose of the hearing of such informations, complaints, charges, summonses and applications.

Jurisdiction of juvenile courts. cf. 13, 1941, s. 6.

12. (1) Except as otherwise expressly provided by this Act or any other Act—

- (a) an information, complaint or charge against a child ;
- (b) an information, complaint, charge or application under Division I of Part IV of the Social Welfare Act ; and
- (c) a complaint, summons or application under Part V of the Education Act, 1915-1965,

shall not be heard by any court of summary jurisdiction that is not a juvenile court.

(2) Except as otherwise provided by this Act, an information, complaint, charge or any application or other proceedings against a person who has attained the age of eighteen years shall not be heard by a juvenile court.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no conviction, order or adjudication of a court shall be invalid by reason only of a contravention of those subsections.

Power of justice to issue process. cf. 13, 1941, s. 6.

13. No provision of section 8, section 11 or section 12 of this Act shall be construed as restricting the powers of any justice to sit in any convenient building, room or place for the purpose of issuing any summons, warrant or other process or of hearing an application for bail or of hearing such evidence as may be necessary for any of such purposes.

PART III.

GENERAL PROCEDURE AND POWERS OF COURTS.

14. (1) If it appears to a juvenile court that any information, complaint, charge or any application or other proceedings before the court can be more conveniently, economically or fairly heard and determined by some other juvenile court, the first-mentioned court may desist from further proceeding with the hearing, and if the court so desists, it shall by memorandum refer the proceedings for hearing and determination by the other juvenile court on a date and at a time which shall be specified in the memorandum and notified to the parties to the proceedings.

Change of venue.
cf. 13, 1941,
s. 9.

(2) Upon so referring the proceedings, the court may suffer the defendant to go at large or remand him into suitable custody or discharge him upon his entering into a recognizance with or without sureties to appear before the court to which the proceedings have been referred upon the date and at the time so specified.

(3) Subsection (2) of this section shall not be construed as authorizing the court to remand a child to custody in a prison.

15. (1) Notwithstanding anything contained in sections 8, 11 and 12 of this Act, where, in the course of any proceedings before a court other than a juvenile court, it appears to the court that the person against whom the proceedings were instituted is a child, the following provisions of this subsection shall apply :—

Procedure when fact that defendant is charged in wrong court becomes known during hearing.
cf. 13, 1941,
s. 6.

- (a) The court may desist from further proceeding with the hearing of the proceedings, or it may, subject to this Act, proceed with the hearing and determination of those proceedings or, as the case requires, with the preliminary examination, as if it were a properly constituted juvenile court :
- (b) If the court so desists, it shall by memorandum refer the proceedings for hearing and determination by an appropriate juvenile court upon a date and at a time which shall be specified in the memorandum and notified to the parties to the proceedings :
- (c) Upon so referring the proceedings, the court may allow the child to go at large or remand him to custody in an institution or other suitable place (not being a prison) or to the temporary custody of a suitable person or discharge him upon his entering into a recognizance with or without sureties to appear before the court to which the proceedings have been referred upon the date and at the time so specified.

(2) Notwithstanding anything contained in sections 8, 11 and 12 of this Act, where, in the course of any proceedings before a juvenile court, it appears to the court that the person against whom the proceedings were instituted had attained the age of eighteen years before the commencement of such proceedings, the following provisions of this subsection shall apply :—

- (a) The court may desist from further proceeding with the hearing of the proceedings, or it may proceed with the hearing and determination of those proceedings or, as the case requires, with the preliminary examination as a court of summary jurisdiction that is not a juvenile court :
- (b) If the court so desists, it shall by memorandum refer the proceedings for hearing and determination by an appropriate court of summary jurisdiction upon a date and at a time which shall be specified in the memorandum and notified to the parties to the proceedings :
- (c) Upon so referring the proceedings, the court may allow the defendant to go at large or remand him into suitable custody or discharge him upon his entering into a recognizance with or without sureties to appear before the court to which the proceedings have been referred upon the date and at the time so specified.

(3) The court to which any proceedings are referred under this section shall have jurisdiction to hear and determine the proceedings.

Procedure
when child
attains age of
18 years
during hearing.

16. (1) Where a person who has not attained the age of eighteen years at the time when proceedings against him are commenced before a juvenile court attains that age before those proceedings are finally determined by that court, the court may continue to hear and determine the proceedings and may—

- (a) in lieu of sentencing such person to imprisonment, by order, send the person to an institution to be there detained or otherwise dealt with under the Social Welfare Act for a period of two years or for such lesser period as the court in its discretion deems fit ;
- (b) by an order in writing, place such person under the control of the Minister for a period of two years or for such lesser period as the court in its discretion deems fit ; or
- (c) make any other appropriate order which the court could lawfully have made if such person had not yet attained the age of eighteen years.

(2) Where a person, who has not attained the age of eighteen years at the time when proceedings against him are commenced before any court, attains that age before the Supreme Court makes an order on appeal from the order of that court, the Supreme Court may make any order that could be made by a juvenile court under subsection (1) of this section.

(3) Where a person, who has not attained the age of eighteen years at the time when proceedings against him for an offence to which section 41 of this Act relates are commenced before any court, attains that age before the Supreme Court, after committal thereto, sentences him upon conviction for the offence, the Supreme Court may make any order that could be made by a juvenile court under subsection (1) of this section.

(4) Where a person, who has not attained the age of eighteen years at the time when proceedings against him for an offence to which section 42 of this Act relates are commenced before any court, attains that age before the Supreme Court, after committal thereto, sentences him upon conviction for the offence, the Supreme Court may make any order that could be made by a juvenile court under subsection (1) of this section, or may exercise any of the powers authorized by that section as if the person had not attained the age of eighteen years.

(5) Where a person, who has not attained the age of eighteen years at the time when proceedings against him for an offence to which section 43 of this Act relates are commenced before any court, attains that age before the Supreme Court, after committal thereto, sentences him upon conviction for the offence, the Supreme Court may make any order authorized by that section as if the person had not attained the age of eighteen years.

17. (1) Where an information, complaint or charge comes before a juvenile court charging a child with the commission of an offence jointly with any other person or persons and one or more of the persons jointly charged is not a child, the court may—

Procedure where child charged jointly with adult.

- (a) if it is constituted of a special magistrate, direct that the proceedings against the child be heard and determined separately before a juvenile court or that the proceedings against the child and the other person or persons be heard and determined jointly before a juvenile court or before a court of summary jurisdiction that is not a juvenile court ; or
- (b) if it is constituted of two justices, submit the information, complaint or charge for the consideration of a special magistrate who shall direct that the pro-

ceedings against the child be heard and determined separately before a juvenile court or that the proceedings against the child and the other person or persons be heard and determined jointly before a juvenile court or before a court of summary jurisdiction that is not a juvenile court,

and those proceedings shall be heard and determined accordingly.

(2) Where those proceedings are heard and determined jointly before a juvenile court, that court, in relation to any accused person or defendant who is not a child, shall exercise its jurisdiction and powers as a court of summary jurisdiction that is not a juvenile court.

(3) Where those proceedings are heard and determined jointly before a court of summary jurisdiction that is not a juvenile court, that court, in relation to any accused person or defendant who is a child, shall exercise its jurisdiction and powers as if it were a juvenile court.

(4) Pending the hearing of the information, complaint or charge any court of summary jurisdiction or a justice may, in relation to the child or other person or persons, exercise the powers of a court which may be exercised under subsection (2) of section 14 of this Act in relation to a defendant.

18. (1) Where any juvenile court, other than the Adelaide Juvenile Court, has found the offence or other matter alleged in an information, complaint or charge against a child proved, and is of the opinion that it is expedient to refer the case to the Adelaide Juvenile Court in order that the child may be further dealt with by that court, the first-mentioned court may—

- (a) refer the case by memorandum to the Adelaide Juvenile Court and remand the child to an institution or some other suitable place (not being a prison) and order that the child be brought before that court on a date and at a time specified in the order; and
- (b) transmit to the Adelaide Juvenile Court the information, complaint or charge together with the evidence, a statement of the finding by the court, and any other relevant documents.

(2) When a case is so referred, the child may be examined and reported on by one or more physicians, psychologists or psychiatrists as directed or authorized by the Adelaide Juvenile Court.

Reference
cases to
Adelaide
Juvenile
Court.
cf. 13, 1941.
s. 14.

(3) The Adelaide Juvenile Court shall consider the evidence taken by the court which heard the case, the finding of that court and the reports made upon the child pursuant to subsection (2) of this section and any other relevant matters, and may make any order authorized by law in respect of the child as if the information, complaint or charge against the child had been heard and determined by the Adelaide Juvenile Court.

19. (1) Where a child is charged with any offence or is for any other reason brought before a juvenile court, the court may order that his parents or guardian shall attend at the court before which the case is heard or determined during all the stages of the proceedings, unless sooner excused by the court.

Attendance at court of parent, etc. of child charged with offence. cf. 13, 1941, s. 10.

(2) When the court makes an order under subsection (1) of this section directed to a guardian of the child who is not a parent of the child, the attendance of the father or the mother of the child, or both, may also be ordered.

(3) When the court makes an order under subsection (1) of this section, it may adjourn the hearing of the case.

(4) The court shall cause every such order to be served upon the parent or guardian named therein.

(5) Such order shall be deemed sufficiently served if a notice containing a copy thereof is served personally on such parent or guardian or posted addressed to him at his last known place of abode or business a reasonable time before the date of hearing of the case.

(6) Any person who, having been served with an order under this section, fails to attend the court in compliance therewith shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(7) Notwithstanding anything contained in this section, the court may, if it thinks it expedient and just to do so, proceed with the hearing and determination of the case in the absence of the parent or guardian.

20. (1) Notwithstanding anything contained in any other Act, where the hearing of any proceedings against a child is adjourned by a juvenile court or referred by one court to another under any provision of this Act and the child is not allowed to go at large and not released on bail, any juvenile court may, from time to time, order that the child be remanded to an institution or other suitable place (not being a prison) or in the temporary custody of a suitable person for a period not exceeding in each case, twenty-one days.

Remand of child during course of proceedings. cf. 1780, 1926, s. 181.

(2) The court which makes an order under subsection (1) of this section, or the Adelaide Juvenile Court, may at any time revoke the order and in lieu thereof make another order remanding the child to an institution or other suitable place (not being a prison) or in the temporary custody of a suitable person for a period not exceeding twenty-one days.

(3) Notwithstanding anything contained in subsection (1) or subsection (2) of this section, the court referred to in either of those subsections, if constituted of a special magistrate, may, with the consent of the child or of the parent or guardian of the child, order that the child be remanded for a period exceeding twenty-one days but not exceeding thirty-five days.

21. (1) Where a justice is satisfied by the evidence of a legally qualified medical practitioner that the attendance before a court of any child in respect of whom an offence is alleged to have been committed would involve serious danger to his life or health, the justice may take in writing the deposition of the child, and shall thereupon sign the deposition and add thereto a statement of his reasons for taking it and of the day when and the place where it was taken and of the names of the persons (if any) present at the taking thereof.

(2) The justice shall, if the child is of or over the age of ten years, take the deposition on oath.

22. Where, in any proceedings in any court in respect of an offence against a child, the court is satisfied—

(a) by the evidence of a legally qualified medical practitioner that the attendance before the court of the child would involve serious danger to his life or health ; or

(b) that the child is dead,

any deposition of the child taken pursuant to section 21 of this Act shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the justice by or before whom it purports to have been taken ; but the deposition shall not be admissible in evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been served upon him and that he or his counsel or solicitor had, or might have had, if he had chosen to be present, an opportunity of cross-examining the child making the deposition.

23. In the absence of proof of age, any court may determine upon its own view without further inquiry or after such inquiry as it deems warranted in the circumstances, whether a person charged before it is a child and the age of that person, and shall insert in the relevant mandate or order (if any) the age so determined.

Extension of power to take deposition of child.

cf. 13, 1941, s. 19.

Admission of deposition in evidence.

cf. 13, 1941, s. 20.

In absence of proof of age, court to determine age of child on its own view.

cf. 1780, 1926, s. 119.