



ANNO VICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1979

No. 44 of 1979

An Act to provide for the protection, care and rehabilitation of children; to provide for the welfare of the community; to repeal the Juvenile Courts Act, 1971-1975; to amend the Criminal Injuries Compensation Act, 1978, the Education Act, 1972-1976, the Guardianship of Infants Act, 1940-1975, and the Justices Act, 1921-1976; and for other purposes.

[Assented to 15th March, 1979]

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

PART I

PRELIMINARY

1. This Act may be cited as the "Children's Protection and Young Offenders Act, 1979". Short title.

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

(2) The Governor may, in a proclamation made for the purposes of subsection (1) of this section, suspend the operation of any specified provisions of this Act until a day fixed by the proclamation, or a day to be fixed by subsequent proclamation.

3. This Act is arranged as follows:—

Arrangement
of Act.

PART I—PRELIMINARY

PART II—CONSTITUTION AND JURISDICTION OF CHILDREN'S COURT

PART III—PROTECTION OF CHILDREN WHO ARE IN NEED OF CARE

PART IV—YOUNG OFFENDERS

DIVISION I—SCREENING PANELS

DIVISION II—CHILDREN'S AID PANELS

DIVISION III—APPREHENSION AND REMAND

DIVISION IV—TRIAL AND SENTENCING

DIVISION V—SPECIAL PROVISIONS RELATING TO RECOGNIZANCES

DIVISION VI—SPECIAL PROVISIONS RELATING TO DETENTION

DIVISION VII—GENERAL PROVISIONS

PART V—APPEALS AND RECONSIDERATION OF SENTENCE

PART VI—THE CHILDREN'S COURT ADVISORY COMMITTEE

PART VII—MISCELLANEOUS

Interpretation.

4. In this Act, unless the contrary intention appears—

“adult court” means the Supreme Court of South Australia or a District Criminal Court:

“assessment panel” means an assessment panel constituted under the Community Welfare Act, 1972-1979:

“child”—

(a) in relation to any proceedings (other than proceedings for offences), means a person who has not attained the age of eighteen years at the commencement of those proceedings;

and

(b) in relation to proceedings for an offence, means a person who had not attained the age of eighteen years on the day upon which he allegedly committed the offence:

“children's aid panel” means a children's aid panel constituted under Part IV of this Act:

“the Children's Court” or “the Court” means the Children's Court of South Australia constituted under Part II of this Act:

“complaint” includes information:

“the Department” means the Department for Community Welfare:

“the Director-General” means the person for the time being holding, or acting in, the office of Director-General of Community Welfare:

“group I offence” means a group I offence as defined in the Local and District Criminal Courts Act, 1926-1976:

“group II offence” means a group II offence as defined in the Local and District Criminal Courts Act, 1926-1976:

“group III offence” means a group III offence as defined in the Local and District Criminal Courts Act, 1926-1976:

- “guardian” in relation to a child, means a parent of the child and any person (other than the Minister) who is the legal guardian of the child or who has the immediate custody and control of the child:
- “homicide” means any of the offences referred to in sections 11, 12, 13, 16, 17 and 18 of the Criminal Law Consolidation Act, 1935-1976:
- “Judge” means a Judge or an Acting Judge of the Children’s Court:
- “the Minister” means the Minister of Community Welfare, or any other Minister of the Crown for the time being discharging the duties of office of that Minister, or acting in the exercise or performance of powers or functions delegated to him by that Minister:
- “minor indictable offence” means minor indictable offence within the meaning of the Justices Act, 1921-1976:
- “panel” means screening panel, children’s aid panel or assessment panel:
- “parent”, in relation to a child, includes a step-mother or step-father of the child:
- “the repealed Act” means the Juvenile Courts Act, 1971-1975, repealed by this Act:
- “Senior Judge” means the Senior Judge or the Acting Senior Judge of the Children’s Court:
- “screening panel” means a screening panel constituted under Part IV of this Act:
- “simple offence” means simple offence within the meaning of the Justices Act, 1921-1976:
- “special justice” means a special justice within the meaning of the Justices Act, 1921-1976:
- “special magistrate” means a special magistrate within the meaning of the Justices Act, 1921-1976:
- “training centre” means a home established by the Minister under the Community Welfare Act, 1972-1979, for the reception, detention, correction and training of children:
- “the Training Centre Review Board” means the board established under Division VI of Part IV of this Act:
- “truant” means a truant within the meaning of the Education Act, 1972-1979:
- “youth project centre” means a youth project centre established under the Community Welfare Act, 1972-1979.

5. (1) The following Acts and portion of an Act are repealed:—

Repeal provision.

Juvenile Courts Act, 1971

Juvenile Courts Act Amendment Act, 1972

Juvenile Courts Act Amendment Act, 1974

so much of the Statute Law Revision Act (No. 3), 1975, as amended the Juvenile Courts Act, 1971-1974.

(2) The Acts referred to in the first column of the schedule to this Act are amended as shown in the second column and, as amended, may be cited as shown in the third column of that schedule.

Transitional provisions.

6. (1) This Act shall apply in relation to any offence, or any circumstances which could give rise to proceedings in relation to a child, whether that offence or those circumstances occurred before or after the commencement of this Act.

(2) Any proceedings commenced under the repealed Act and not finally disposed of at the commencement of this Act may be continued and disposed of under this Act in all respects as if the proceedings had been commenced under this Act.

(3) Any order made by a court under the repealed Act and still in force as at the commencement of this Act shall be deemed to be an order made by a court under this Act.

(4) Any undertaking given at the request of a juvenile aid panel under the repealed Act and still in force as at the commencement of this Act shall be deemed to be an undertaking given at the request of a children's aid panel under this Act.

(5) An order made by a juvenile court under the repealed Act placing a child under the care and control of the Minister and still in force as at the commencement of this Act, shall be deemed to be an order made by the Children's Court under this Act placing the child under the guardianship of the Minister.

(6) Where an order referred to in subsection (5) of this section was made under section 42 of the repealed Act, the order shall (unless it is discharged earlier pursuant to this Act, or on its own terms it expires earlier) expire—

(a) upon the expiration of two years from the day on which the order was made;

or

(b) upon the expiration of three months from the commencement of this Act,

whichever last occurs.

Factors to be considered when Court, etc., deals with a child.

7. In any proceedings under this Act, any court, panel or other body or person, in the exercise of its or his powers in relation to the child the subject of the proceedings, shall seek to secure for the child such care, correction, control or guidance as will best lead to the proper development of his personality and to his development into a responsible and useful member of the community and, in so doing, shall consider the following factors:—

(a) the need to preserve and strengthen the relationship between the child and his parents and other members of his family;

(b) the desirability of leaving the child within his own home;

(c) the desirability of allowing the education or employment of the child to continue without interruption;

(d) where appropriate, the need to ensure that the child is aware that he must bear responsibility for any action of his against the law; and

(e) where appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.

PART II

PART II

CONSTITUTION AND JURISDICTION OF CHILDREN'S COURT

8. (1) There shall be a court known as the "Children's Court of South Australia". Constitution of Children's Court.

(2) The Court shall be constituted of the following members:—

(a) such number of persons holding judicial office under the Local and District Criminal Courts Act, 1926-1976, as the Governor may, by instrument in writing, designate as Judges of the Children's Court;

(b) the special magistrates designated by the Governor, by instrument in writing, as members of the Children's Court;
and

(c) every special justice and justice of the peace.

(3) The Governor may appoint a Judge of the Children's Court to be the Senior Judge of the Court and may, where he considers it necessary or expedient to do so, appoint a Judge of the Children's Court to be an Acting Senior Judge of the Court for such time as he specifies in the instrument of appointment.

(4) The Governor may, by further instrument in writing, vary or revoke any instrument referred to in subsection (2) of this section.

(5) The Senior Judge may delegate to any Judge of the Children's Court any of his powers, duties or functions under sections 54 or 87 of this Act.

(6) A delegation under subsection (5) of this section is revocable at will, and shall not prevent the exercise or performance of any power, duty or function by the Senior Judge.

9. (1) Subject to this Act, no complaint against a child shall be heard or disposed of in any court other than the Children's Court. Jurisdiction of Children's Court.

(2) The validity of any decision, judgment or order of a court is not affected by reason of the fact that subsection (1) of this section is not complied with in any particular case.

(3) Subject to this Act, the Children's Court shall, in relation to any proceedings—

(a) under Part III of this Act;

(b) under the Guardianship of Infants Act, 1940-1975;

or

(c) on an appeal under the Community Welfare Act, 1972-1979,

have all the powers of a local court under the Local and District Criminal Courts Act, 1926-1976.

(4) In addition to the powers conferred by subsection (3) of this section, the Children's Court shall have the following powers:—

(a) in relation to any proceedings under Part III of this Act, the power to hear and determine any matter *ex parte* in such circumstances as the Court thinks fit;

and

(b) in relation to any proceedings to which subsection (3) of this section applies, any prescribed power.

(5) The provisions of the Justices Act, 1921-1976, shall, subject to this Act and the regulations, apply *mutatis mutandis* to and in relation to any proceedings in the Children's Court upon a complaint against a child and, for the purposes of any such proceedings (other than a preliminary examination), the Children's Court shall sit as a court of summary jurisdiction.

How
Jurisdiction
of Court is
exercisable.

10. Subject to this Act, or any other Act, the jurisdiction of the Children's Court shall be exercisable by the members of the Court in the following manner:—

(a) by a Judge, special magistrate or special justice, sitting alone;

or

(b) by two justices of the peace, sitting together.

Sittings
of Court.

11. (1) So far as is reasonably practicable, the Children's Court shall not sit in any building while any other court is sitting therein.

(2) The Senior Judge of the Children's Court may make the necessary administrative arrangements for the hearing and disposal of all proceedings before the Court.

(3) Any number of members of the Children's Court may sit contemporaneously in exercising the jurisdiction of the Court.

PART III

PART III

PROTECTION OF CHILDREN WHO ARE IN NEED OF CARE

12. (1) Where the Minister is of the opinion that a child is in need of care by reason that—

- (a) a guardian of the child has maltreated or neglected the child to the extent that the child has suffered, or is likely to suffer, physical or mental injury, or to the extent that his physical, mental or emotional development is in jeopardy;
 - (b) the guardians of the child are unable or unwilling to exercise adequate supervision and control over the child;
 - (c) the guardians of the child are unable or unwilling to maintain the child;
- or
- (d) the guardians of the child are dead, have abandoned the child, or cannot, after reasonable enquiries, be found,

Minister may apply for declaration that child is in need of care.

the Minister may apply to the Children's Court for a declaration that the child is in need of care.

(2) The child the subject of an application under this section, and each guardian of the child, shall be parties to the application.

13. (1) Subject to subsection (2) of this section, a copy of an application under section 12 of this Act must be served by the Minister upon the following persons:—

Service of application.

- (a) where the child the subject of the application is of or above the age of ten years, that child;
- and
- (b) each guardian of the child.

(2) The application shall be served personally or, in relation to a guardian, by post addressed to him at his last known place of abode or employment in any case where—

- (a) it is not practicable to serve the application upon the guardian personally;
- or
- (b) the whereabouts of the guardian has not, after reasonable enquiries, been ascertained.

(3) A copy of an application for service in accordance with this section must be endorsed with a notification of the place, date and time for the hearing of the application.

14. (1) Upon finding that a child the subject of an application under this Part is a child in need of care within the meaning of section 12 of this Act, the Court shall declare accordingly and—

Orders Court may make.

- (a) may, by order, place the child under the guardianship of the Minister for such period of time as the Court thinks fit;

or

(b) may, by order—

(i) place the child under the control of the Director-General in respect of such matters relating to the care or welfare of the child as the Court specifies in the order, for such period of time as the Court thinks fit;

(ii) direct that the child shall reside with such person as the Court thinks fit;

or

(iii) direct any guardian who is a party to the proceedings to take such steps to secure proper care and control of the child as the Court thinks fit.

(2) The Court shall not make an order under subsection (1) of this section placing a child under the guardianship of the Minister unless it has first obtained and considered a report on the child from an assessment panel.

(3) Upon declaring that a child is in need of care, the Court may, in such circumstances as it thinks fit, adjourn the proceedings for a period of time not exceeding three months.

(4) Upon any adjournment under this section, the Court may make any order referred to in subsection (1) of this section, to have effect for the period of the adjournment.

(5) Upon the expiration of the period of the adjournment or at such earlier time as the Court, upon the application of—

(a) where the child is of or above the age of ten years, the child;

or

(b) any other party to the application,

may allow, the Court may—

(c) declare that the child is no longer a child in need of care and discharge any order;

(d) affirm the declaration that the child is in need of care;

(e) affirm or vary the terms of any order;

or

(f) discharge any order and substitute therefor any other order it is empowered to make under subsection (1) of this section.

(6) No order under this section may extend beyond the time at which the child attains the age of eighteen years.

(7) A guardian who fails to comply with an order of the Court made under this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

15. (1) Subject to subsection (2) of this section, any party to an application under this Part may apply to the Court for an order to terminate, or vary, an order made by the Court under section 14 of this Act in respect of the child.

(2) A child of less than ten years of age may not make an application under this section.

(3) Subject to subsection (4) of this section, a copy of an application under this section must be served by the applicant on each other party to the proceedings in the manner provided by subsection (2) of section 13 of this Act.

(4) Where a child makes an application under this section, the Court shall effect service of the application on behalf of the child.

(5) A copy of an application for service in accordance with this section must be endorsed with a notification of the place, date and time for the hearing of the application.

(6) The Court may, on an application under this section—

(a) declare that the child is no longer a child in need of care and discharge the order;

(b) affirm the declaration that the child is in need of care;

(c) affirm or vary the terms of the order;

or

(d) discharge the order and substitute therefor any other order that it is empowered to make under section 14 of this Act.

16. (1) The Court may adjourn the hearing of any application under this Part for a period not exceeding twenty-eight days.

General power of adjournment.

(2) The Court may not without the approval of the Senior Judge further adjourn the hearing of an application where it has already adjourned the hearing under this section for two successive periods.

(3) On any adjournment under this section the Court may, by order, without declaring that the child is in need of care, place the child under the guardianship of the Minister for the period of the adjournment.

17. (1) In any proceedings under this Part the Court shall not be bound by the rules of evidence, but may inform itself upon any matter relating to the proceedings in such manner as the Court thinks fit.

Provisions as to procedure.

(2) Any fact to be proved by a person in any proceedings under this Part shall be sufficiently proved if it is proved on the balance of probabilities.

(3) In any proceedings under this Part the Court may, upon the application of—

(a) a relative of the child;

(b) a person who has at any time had the child in his care;

or

(c) any other person who has counselled, advised or aided the child,

hear any submissions the applicant wishes to make in respect of the child.

(4) The Court may, for the purpose of determining any application under this Part, request that a report be furnished to the Court in respect of the physical or mental health and capacity of the child.

(5) Where the Minister makes any application under this Part, and the Court is satisfied that no other party to the proceedings wishes to dispute the application, the Court may proceed to hear and determine the application in the absence of those other parties.

18. Where the Court dismisses any application made under this Part by the Minister, the Court may make such order for costs against the Minister in favour of the child the subject of the proceedings, or a guardian of the child, as the Court thinks fit.

Court may make order for costs in certain circumstances.

PART III

Detention of children suspected to be in need of care.

19. (1) Where an application under this Part has been made in respect of a child, a member of the Children's Court may make an order for the removal of the child from any place.

(2) Any officer of the Department authorized for the purpose by the Minister, or any member of the police force may, without an order or other warrant, remove from any place any child whom he suspects on reasonable grounds of being a child in need of care or in immediate danger of suffering physical or mental injury.

(3) Any authorized officer of the Department or a member of the police force may, for the purpose of removing a child pursuant to this section, enter or break into any place or premises and use such force as is reasonably necessary.

(4) Where a child has been removed from a place pursuant to this section, he may be held in custody by the Director-General with a person, or in a place (other than a prison or a training centre), approved by the Minister, until he is brought before the Court for the hearing of an application under this Part.

(5) A child who is held in custody pursuant to this section shall be brought before the Court for the hearing of an application under this Part no later than the next working day following the day on which he was taken into custody.

How jurisdiction under this Part is to be exercised.

20. (1) Where an application under this Part comes on for hearing before a special justice or two justices of the peace of the Court, the justice, or justices, shall not proceed to hear and determine the application, but shall adjourn the hearing for a period not exceeding twenty-eight days and refer the matter to the Senior Judge for his directions, and the justice, or justices, may, by order, place the child the subject of the proceedings under the guardianship of the Minister for the period of the adjournment.

(2) Subject to subsection (1) of this section, applications under this Part shall be heard and determined by a Judge or special magistrate of the Court.

Duties of assessment panels under this Part.

21. Where an assessment panel is required to furnish a report in any proceedings under this Part, the assessment panel—

(a) shall investigate and report on the personal circumstances and social background of the child;

and

(b) may make such recommendations as to the care of the child as it thinks appropriate.

Minister is lawful guardian.

22. While a child is under the guardianship of the Minister pursuant to this Part, the Minister is the lawful guardian of the child, and is entitled to the immediate custody and control of the child, to the exclusion of the rights of any other person.

Powers of Director-General.

23. (1) Subject to this Act, the Director-General may from time to time make provision for the care of a child who is under the guardianship of the Minister pursuant to this Part in any of the following ways:—

(a) he may place the child, or permit the child to remain, in the care of any guardian or relative of the child;

- (b) he may place the child in the care of a person who is an approved foster parent for the purposes of the Community Welfare Act, 1972-1979, or any other suitable person;
 - (c) he may place the child in any home established or licensed under the Community Welfare Act, 1972-1979, or in any other suitable place, and make such directions as to the care and keeping of the child in that home as he thinks fit;
 - (d) he may, if it is necessary or desirable for the sake of the physical or mental health of the child, place him in any hospital;
- or
- (e) he may make such other provision for the care of the child as the circumstances of the case may require.

(2) Whenever a child has been dealt with by the Director-General under subsection (1) of this section, he shall notify the guardians of the child in writing at their last addresses known to him of the manner in which the child has been so dealt with.

(3) An officer of the Department authorized for the purpose by the Minister, or a member of the police force, may, without any warrant, remove, a child who is under the guardianship of the Minister from any place, and for that purpose may enter or break into any place or premises and use such force as is reasonably necessary.

24. Where a child is under the guardianship of the Minister pursuant to this Part, the Minister shall cause a review to be made of the progress and circumstances of the child at least once in each year that the child is under the guardianship of the Minister.

Review of guardianship of child.

PART IV**PART IV****YOUNG OFFENDERS****DIVISION I—SCREENING PANELS****DIVISION I**

Application
of this
Division.

25. This Division does not apply in relation to—

- (a) homicide;
- (b) any offence, other than a prescribed offence, under the Motor Vehicles Act, 1959-1978, or the Road Traffic Act, 1961-1979, alleged to have been committed by a child of or above the age of sixteen years;
- or
- (c) truancy.

Screening
panel list.

26. (1) The Director-General shall prepare and maintain a list containing the names and addresses of persons qualified in accordance with subsection (2) of this section for membership of screening panels constituted under this Act.

(2) The following persons are qualified to be members of screening panels:—

- (a) members of the police force approved by the Chief Secretary;
- and
- (b) officers of the Department approved by the Minister.

Constitution
of screening
panels.

27. A screening panel shall be constituted of—

- (a) a member of the police force;
- and
- (b) an officer of the Department,

chosen from the screening panel list.

Functions of
screening
panels.

28. (1) A person shall—

- (a) before laying a complaint against a child for an offence;
- or
- (b) where he has apprehended a child without warrant pursuant to Division III of this Part, forthwith upon that apprehension,

refer the matter to a screening panel for consideration.

(2) A screening panel shall, after considering the allegations against a child and any existing reports of the Department or of the Police Department on the child, decide whether the matter is to be brought before the Children's Court on complaint or dealt with by a children's aid panel, and shall certify accordingly.

(3) No person is to be required or is entitled to appear before, or make representations to, a screening panel.

(4) There shall be no appeal against a decision of a screening panel.

**PART IV
DIVISION I**

29. Where the members of a screening panel are unable to agree as to whether a child should be dealt with by the Court or a children's aid panel, they shall appear in chambers before a Judge or special magistrate of the Court, whose decision on the matter shall be final.

Where screening panel cannot reach agreement.

30. (1) Where a screening panel has certified that a matter is to be heard before a children's aid panel—

Procedure on decision by screening panel.

(a) subject to this Act, no complaint shall be laid against the child;
and

(b) if the child has been apprehended without warrant pursuant to Division III of this Part, he shall be released from detention, or any recognizance entered into by the child for the purposes of bail shall be discharged, as the case may require.

(2) The release of a child from detention, or the discharge of a recognizance, pursuant to subsection (1) of this section, shall not render that detention or recognizance unlawful.

(3) Where a screening panel has certified that a matter is to be heard before the Children's Court, a complaint shall be laid against the child.

(4) Nothing in this Division derogates from the discretion of any person to decide at any time not to proceed with the prosecution of a child.

DIVISION II—CHILDREN'S AID PANELS**DIVISION II**

31. (1) The Director-General shall prepare and maintain a list containing the names and addresses of persons who are qualified in accordance with subsection (2) of this section for membership of children's aid panels constituted under this Act.

Children's aid panel list.

(2) The following persons are qualified to be members of children's aid panels:—

- (a) members of the police force approved by the Chief Secretary;
- (b) officers of the Department approved by the Minister;
- (c) officers of the Education Department approved by the Minister of Education.

32. (1) A children's aid panel shall be constituted of—

Constitution of children's aid panels.

- (a) where an offence (other than truancy) is alleged, a member of the police force and an officer of the Department;
 - (b) where truancy is alleged, an officer of the Department and an officer of the Education Department;
- and
- (c) where truancy and any other offence is alleged, a member of the police force, an officer of the Department and an officer of the Education Department,

chosen from the children's aid panel list.

(2) A person who has sat on a screening panel in relation to a child is not thereby debarred from sitting on a children's aid panel for the purpose of dealing with the same child.