



ANNO VICESIMO

# ELIZABETHAE II REGINAE

A.D. 1971

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## No. 69 of 1971

An Act to consolidate and amend the law relating to the commission of offences by young persons, and to neglected and uncontrolled children; to repeal the Juvenile Courts Act, 1965-1969; to amend the Offenders Probation Act, 1913-1969; and for other purposes.

[Assented to 4th November, 1971]

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 "Juvenile Courts Act, 1971". Short title.
  
2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commence-  
ment.

(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 date fixed in the proclamation, or a date to be fixed by subsequent proclamation.
  
3. In any proceedings under this Act, a juvenile court or a juvenile aid panel shall treat the interests of the child in respect of whom the proceedings are brought as the paramount consideration and, with the object of protecting or promoting those interests, shall in exercising the powers conferred by this Act adopt a course calculated to— Interests of  
child to be  
paramount.

(a) secure for the child such care, guidance and correction as will conduce to the welfare of the child and the public interest;

and

(b) conserve or promote, as far as may be possible a satisfactory relationship between the child and other members of, or persons within, his family or domestic environment,

and the child shall not be removed from the care of his parents or guardians except where his own welfare, or the public interest, cannot, in the opinion of a court, be adequately safeguarded otherwise than by such removal.

**Arrangement.**

4. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—INITIAL PROCEEDINGS AGAINST CERTAIN CHILDREN UNDER THE AGE OF SIXTEEN YEARS

PART III—CONSTITUTION AND JURISDICTION OF JUVENILE COURTS

PART IV—GENERAL PROCEDURE AND POWERS OF COURTS

PART V—SPECIAL PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF COMPLAINTS ETC.

PART VI—PROVISIONS RELATING MAINLY TO NEGLECTED AND UNCONTROLLED CHILDREN AND HABITUAL TRUANTS

PART VII—APPEALS FROM AND RECONSIDERATION OF PENALTY BY JUVENILE COURTS

PART VIII—GENERAL PROVISIONS.

**Interpretation.**

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

“assessment centre” means a centre established under the Community Welfare Act for the examination of children, the evaluation of their personal circumstances and social background, and the assessment of the most appropriate treatment or rehabilitative correction or education for each child:

“child” in relation to proceedings under this Act means a person who has not attained the age of eighteen years at the time of the proceedings and, where the proceedings relate to the commission of an offence, includes a person who had not attained the age of eighteen years on the date of the alleged 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:

“habitual truant” means an habitual truant as defined in the Education Act, 1915-1971:

“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:

“home” means a home or centre within the meaning of the Community Welfare Act:

“indictable offence” includes a minor indictable offence as defined in the Justices Act, 1921-1969:

“Judge” means a Judge by whom the jurisdiction of a juvenile court is exercisable:

“juvenile aid panel” or “panel” means a juvenile aid panel constituted under Part II of this Act:

“juvenile court” means a juvenile court constituted under this Act, and includes a juvenile court constituted 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 the Minister of Community Welfare:

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

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

**PART I**

“special justice” means a special justice appointed pursuant to the provisions of the Justices Act, 1921-1969:

“the Community Welfare Act” means the Community Welfare Act, 1971, as amended from time to time:

“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 under the Community Welfare Act:

“the repealed Act” means the Juvenile Courts Act, 1965-1969:

“uncontrolled child” means an uncontrolled child as defined in the Community Welfare Act:

“youth project centre” means a centre established under the Community Welfare Act for the training and rehabilitation of children.

**6. (1)** The Acts referred to in the first part of the schedule to this Act are repealed.

(2) The Offenders Probation Act, 1913-1969, is amended as shown in the second part of the schedule to this Act and, as so amended, may be cited as the “Offenders Probation Act, 1913-1971”.

(3) All proceedings commenced under the repealed Act, and not finally disposed of at the commencement of this Act, may be continued and disposed of in all respects as if the repealed Act were still in force and this Act had not been enacted.

(4) This Act shall not affect the validity or effect of any decisions, judgments or orders made pursuant to the provisions of the repealed Act.

(5) A panel of justices prepared for the purpose of constituting juvenile courts under the repealed Act shall be deemed to be such a panel prepared for the purposes of this Act.

(6) The provisions of the Acts Interpretation Act, 1915-1957, relating to the repeal of statutory provisions, shall, except where inconsistent with this Act, apply and have effect in relation to the repeal effected by this Act.

(7) A reference in any Act, proclamation, regulation, rule or by-law to the repealed Act or any provision of the repealed Act shall be read and construed as a reference to this Act, or the corresponding provision (if any) of this Act.

Transitional provisions.

(8) 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, that Act, rule, regulation, proclamation or by-law shall, unless the Act concerned otherwise provides, be deemed to provide that the order may be made or the jurisdiction may be exercised by a juvenile court constituted under this Act and the provisions of this Act shall for that purpose be deemed to be incorporated with that Act.

(9) Where before the commencement of this Act a child was discharged by a court upon a recognizance under the Offenders Probation Act, 1913-1969, any proceedings in respect of the recognizance may be dealt with and disposed of pursuant to the provisions of that Act in all respects as if the provisions of that Act repealed by this Act had not been so repealed.

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## PART II

PART II

### INITIAL PROCEEDINGS AGAINST CERTAIN CHILDREN UNDER THE AGE OF SIXTEEN YEARS

7. (1) Subject to subsection (2) of this section, this Part shall apply in respect of— Application of Part.

(a) a child under the age of sixteen years;

and

(b) in the case of a child who is alleged to have committed an offence, a child who was under the age of sixteen years on the date of the alleged offence.

(2) This Part shall not apply in respect of—

(a) a child who is alleged to be a neglected child;

or

(b) a child who is alleged to have committed homicide.

8. (1) Where it is alleged that a child to whom this Part applies has committed an offence, the child shall not be charged with the offence but a complaint may, subject to the provisions of this section, be laid against the child, alleging that he is in need of care and control. Allegations to be referred to panels.

(2) A complaint alleging that a child is in need of care and control must also allege the commission of an offence by the child.

(3) Subject to this section and section 15 of this Act, where a child to whom this Part applies is alleged to have committed an offence and the child has not been arrested, no complaint shall be laid against the child but the allegation and a report of the circumstances of the alleged offence shall be referred to a juvenile aid panel to be dealt with by the panel.

(4) Subject to this section and section 15 of this Act, where a child to whom this Part applies is alleged to be an uncontrolled child, or an habitual truant, and the child has not been arrested, no complaint shall be laid against the child but the allegation and a report of the circumstances upon which it is based shall be referred to a juvenile aid panel to be dealt with by the panel.

(5) The provisions of subsection (3) and subsection (4) of this section shall not apply where the child is subject to an order or adjudication of a juvenile court and the order or adjudication, or the effect thereof, is not fully satisfied or completed.

(6) Where a child to whom this section applies is arrested and subsequently appears before a juvenile court, the court may—

(a) proceed to hear and determine the complaint;

or

(b) adjourn the hearing and, if necessary, remand the child on bail or subject to the provisions of section 30 of this Act, in custody, to be dealt with by a juvenile aid panel.

(7) Where a hearing has been adjourned to enable a child to be dealt with by a juvenile aid panel under subsection (6) of this section, the presence of the child before the court shall not be required while the court hears any further application, or makes any order for a further adjournment or remand of the child, unless the court otherwise orders.

(8) Where a hearing has been adjourned to enable a child to be dealt with by a juvenile aid panel under subsection (6) of this section, the court may, upon receipt of a report from the juvenile aid panel, dismiss the complaint, or allow it to be withdrawn, or if the panel refers the matter to the court in pursuance of the provisions of this Part, may proceed to hear and determine the complaint in accordance with the provisions of this Act.

**Panel lists.**

9. (1) The Attorney-General shall prepare a list containing the names and addresses of such persons, who are in his opinion qualified for membership of juvenile aid panels constituted under this Act, as he thinks expedient.

(2) The list must comprise the names and addresses of—

(a) justices included in a panel of justices prepared under Part III of this Act;

(b) officers of the Police Department nominated by the Commissioner of Police;

and

(c) officers of the Department nominated by the Director-General,

and approved for the purpose of inclusion in the list by the Attorney-General.

(3) The Attorney-General may from time to time revise the list prepared under this section.

10. (1) Subject to subsection (2) of this section, a juvenile aid panel shall be constituted of any two persons included in the list prepared by the Attorney-General and nominated by him to constitute the panel.

Constitution of panel.

(2) Each panel must be constituted of—

(a) a person who is a member of the panel of justices, or a person nominated for inclusion in the list by the Commissioner of Police;

and

(b) a person nominated for inclusion in the list by the Director-General.

11. A juvenile aid panel shall not sit for the purpose of exercising any of its functions under this Act in any place commonly used as a courthouse or office of police.

Places at which panels shall not sit.

12. (1) A juvenile aid panel shall refer a matter to a juvenile court if—

Panel to refer matter to court in certain circumstances.

(a) the child does not appear before the panel in accordance with the request of the panel;

(b) the child or a parent or guardian of the child requests at any stage of the proceedings that the matter be heard and determined by a juvenile court;

or

(c) the panel is of the opinion that the matter should be referred to a juvenile court because of the gravity of the alleged offence or because it is expedient in the interests of the child or of the community that the matter be so referred.

(2) A parent or guardian of a child in respect of whom proceedings are brought before a juvenile aid panel shall attend with the child at the hearing of the proceedings and, unless the panel is of the opinion that there is good reason for so doing, it shall not deal with a matter unless the parent or guardian has appeared, but shall refer the matter to a juvenile court for hearing and determination.

(3) The juvenile aid panel must inform the child, and, where present the parent or guardian of the child, that he is entitled to request at any stage of the proceedings that the matter be heard and determined by a juvenile court.

**Reports.**

**13.** (1) The investigating police officer or the Director-General shall, in the case of any matter referred to a juvenile aid panel under this Part cause to be prepared for the information and guidance of the juvenile aid panel a report setting out as far as may be reasonably ascertainable and relevant to the matter under consideration details of any alleged offence and of the personal circumstances and social background of the child to whom the allegation relates.

(2) A panel may request the Director-General to obtain any further information or reports that may be necessary or desirable for the purpose of dealing with a child under this Part and the Director-General shall, so far as is reasonably practicable, comply with such a request.

**Powers of panels.**

**14.** (1) A juvenile aid panel shall have the following powers in dealing with a child under this Part:—

- (a) the panel may warn or counsel the child and his parents or guardians;
- (b) the panel may request the child to undertake, in writing, to comply with such directions as may be given by the panel as to any training or rehabilitative programme to be undergone by the child;
- (c) the panel may request a parent or guardian of the child to undertake, in writing, to comply with such directions as may be given by the panel to assist the child in any training or rehabilitative programme;

or

- (d) the panel may refer the matter to a juvenile court if the child, or a parent or guardian of the child, refuses to make an undertaking as requested by the panel or if, in the opinion of the panel, it is otherwise expedient to do so for the purpose of the rehabilitation of the child.

(2) Where an undertaking is made by a child or the parent or guardian of a child under subsection (1) of this section and the undertaking is not observed at any time within six months after the undertaking is given, the panel may refer the matter to a juvenile court for hearing and determination.

**Reference of matter to juvenile court.**

**15.** (1) Where a matter is referred by a juvenile aid panel to a juvenile court for hearing and determination, the panel shall notify the court in writing of the reason for so referring the matter and shall also cause written notification to be given to the child and a parent or guardian of the child of the decision of the panel so to refer the matter.



(2) Except as provided in subsection (3) of this section, upon referring a matter to a juvenile court the juvenile aid panel or a member of the juvenile aid panel shall, subject to subsection (3) of this section, cause a complaint to be laid against the child alleging that he is a child in need of care and control, an uncontrolled child, or an habitual truant, as the case may require, and the child shall be dealt with by the juvenile court on the basis of that complaint.

(3) Where the panel is of the opinion that proceedings should be taken alleging a child to be an habitual truant, a complaint shall not be laid in respect of the child pursuant to subsection (2) of this section, except by, or with the authority of, the Minister of Education.

(4) Subject to subsection (5) of this section, where a matter has been referred to a juvenile court for hearing and determination, evidence of the proceedings before a juvenile aid panel in respect of the alleged offence shall not be admissible in the juvenile court.

(5) A report of proceedings before a juvenile aid panel in respect of an alleged offence shall be admissible in a juvenile court in proceedings in respect of a subsequent offence found proved against the child.

(6) Notwithstanding the provisions of the Justices Act, 1921-1969, or any other Act, a complaint may be laid against or in respect of a child under this section at any time within twelve months after the matter of the complaint arose.

16. Where a child is dealt with by a juvenile aid panel under this Act, no proceedings shall be brought before any court in respect of the offence alleged to have been committed by the child and upon which the child was dealt with by the panel, unless the matter is referred to a juvenile court by the panel pursuant to the provisions of this Part.

Child who has been dealt with by panel not liable to be again proceeded with.

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### PART III

### PART III

#### CONSTITUTION AND JURISDICTION OF JUVENILE COURTS

17. (1) There shall be a Judge or Judges by whom the jurisdiction of any juvenile court shall be exercisable.

Judge of Juvenile Court.

(2) The Judge or Judges shall be a person or persons appointed to judicial office pursuant to the provisions of the Local and District Criminal Courts Act, 1926-1971, upon whom the Governor has, by proclamation, conferred the jurisdiction exercisable by juvenile courts under this Act.

(3) The Judge, or where there are two or more Judges, the most senior of the Judges, may make and issue administrative directions relating to the constitution and proceedings of juvenile courts.

## PART III

(4) For the purposes of subsection (3) of this section seniority shall be determined according to the date on which jurisdiction is conferred under subsection (2) of this section.

(5) The Governor may, by subsequent proclamation, revoke a proclamation conferring upon a Judge the jurisdiction exercisable by juvenile courts under this Act.

Report.

**18.** (1) The senior Judge shall on or before the thirtieth day of September in each year submit a report to the Minister upon the administration of this Act over the period of twelve months ending on the thirtieth day of June in that year.

(2) The Minister shall, within fourteen days after receipt of the report, lay the report before Parliament if Parliament is then in session, or if Parliament is not then in session, within fourteen days after the commencement of the next session of Parliament.

(3) No proceedings of any kind shall lie against a person in relation to any comment made, in good faith and without malice, by that person on or in relation to a report referred to in subsection (1) of this section.

Constitution of juvenile court.

**19.** (1) Subject to this Act, a juvenile court shall be validly constituted if constituted of a judge, a special magistrate, a special justice, or of two justices chosen from a panel of justices prepared in accordance with the provisions of this section.

(2) 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.

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

(4) Notwithstanding the provisions of subsection (1) of this section, if in the opinion of the clerk of a court of summary jurisdiction, it is not reasonably practicable for the court to be constituted a juvenile court in accordance with that subsection, the court shall be a validly constituted juvenile court if constituted of any two justices.

Juvenile court to be constituted where possible of Judge or special magistrate.

**20.** (1) A juvenile court shall not be constituted of a special justice, or of justices, where it is reasonably practicable for the court to be constituted of a Judge or a special magistrate.

(2) This section does not affect the validity or effect of any decision, judgment or order made by a court constituted in a manner contrary to the provisions of this section.

Jurisdiction and general powers of a juvenile court.

**21.** (1) A juvenile court shall be a court of summary jurisdiction and shall, subject to this Act, have and may exercise in relation to matters arising under this Act all the jurisdiction, powers and functions exercisable by a court of summary jurisdiction under the Justices Act, 1921-1969.

(2) Subject to this Act and the regulations, the provisions of the Justices Act, 1921-1969, and the rules under that Act, shall apply to and in relation to any proceedings of, or in connection with, a juvenile court.

(3) In the case of any inconsistency between the provisions referred to in subsection (2) of this section and the provisions of this Act, the provisions of this Act shall apply.

(4) The provisions of sections 27a, 27b, 27c, 27d, 57a and 70ab of the Justices Act, 1921-1969, and any other provisions of that Act or the rules made thereunder excluded by regulation made pursuant to this Act from applying to proceedings under this Act, shall not apply to any such proceedings.

(5) Except where specific provision is made for the exercise of powers under the Offenders Probation Act, 1913-1971, by a juvenile court, those powers shall not be exercisable by a juvenile court.

22. (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.

Place of sitting.

(2) Every information, complaint, charge, summons or application 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.

23. (1) Except as otherwise expressly provided by this Act or any other Act, an information, complaint or charge against a child, shall not be heard by any court of summary jurisdiction that is not a juvenile court.

Jurisdiction of juvenile courts.

(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.

24. No provision of this Part shall be construed as restricting the powers of any justice or special 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 an adjournment of any proceedings or of hearing such evidence as may be necessary for any of such purposes.

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

PART IV

## PART IV

## GENERAL PROCEDURE AND POWERS OF COURTS

Change of  
venue.

25. (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.

(2) Upon so referring the proceedings, the court may, subject to the provisions of section 30 of this Act, make an order that the child be brought before the court to which the proceedings have been referred on a day and at a time specified in the order.

Procedure  
when fact that  
defendant is  
charged in  
wrong court  
becomes  
known during  
hearing.

26. (1) Notwithstanding any other provision 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 proceeding should have been instituted in a juvenile court, 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, 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 a home 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.