

45. (1) Subject to this section, where it is alleged that a person who has attained the age of eighteen years has committed an offence and that person had not attained the age of eighteen years on the date of the alleged offence, proceedings in respect of the offence shall be commenced before a juvenile court.

Allegation against person who has, since date of offence, attained eighteen years.

(2) Where a complaint or information in respect of a person who has attained the age of eighteen years (whether he attained that age before or after the date on which the proceedings were commenced) is before a juvenile court, and the court has not determined the proceedings in respect of the complaint or information the juvenile court shall inquire as to the nature of the alleged offence, the age of the defendant when the alleged offence was committed, his present age, and any other circumstances relevant to the question of whether the matter should be heard and determined in a juvenile court, and shall take into account any preferences expressed by the complainant or informant and the defendant and, if he is present and wishes to be heard, an officer representing the Director-General.

(3) Following an inquiry under subsection (2) of this section, a juvenile court may proceed to hear and determine the complaint or information or, if it thinks that a hearing in the juvenile court will not be in the best interests of the administration of justice, it may refer the complaint or information for hearing by a court of summary jurisdiction and for that purpose it may adjourn the proceedings and remand the defendant either in custody or on bail to appear before the court of summary jurisdiction.

(4) In any proceedings in a juvenile court against a person who has attained the age of eighteen years, the court may—

(a) proceed to hear and determine the proceedings and make any appropriate order that the court has power to make under the provisions of this Act;

or

(b) proceed to hear and determine the proceedings and make any order that a court of summary jurisdiction could lawfully have made if that person had attained the age of eighteen years on the date of the offence;

or

(c) if the person is charged with an indictable offence, commit him for trial or sentence to the Supreme Court or a District Criminal Court, in which case that court may proceed as if that person had attained the age of eighteen years on the date of the offence.

46. (1) Where a child has entered into a recognizance under this Part, a juvenile court may—

Variation of recognizance.

(a) on application by the Director-General, or on application by or on behalf of the child, or on application by a person who is a surety to the recognizance, vary the conditions of the recognizance;

or

(b) on application by the Director-General or on application by or on behalf of the child and on being satisfied that the child's conduct has been such as to make it unnecessary or undesirable that he should remain subject to the conditions of the recognizance, discharge the recognizance.

(2) Subject to this section, no order shall be made under subsection (1) of this section unless—

(a) in the case of an application by the Director-General, the child has received reasonable notice of the application and has been given a reasonable opportunity of calling such evidence and making such representation to the juvenile court as the court considers relevant to the application;

or

(b) in the case of an application by or on behalf of the child, the Director-General has received reasonable notice of the application and has been given a reasonable opportunity of calling such evidence and making such representations to the juvenile court as may be relevant to the application;

or

(c) in the case of an application by a person who is a surety to the recognizance, the child and the Director-General have received reasonable notice of the application and have been given a reasonable opportunity of calling such evidence and making such representations to the juvenile court as may be relevant to the application.

(3) In the case of any application under this section to vary the conditions of a recognizance the juvenile court may, before making an order, and in the exercise of its discretion, order that reasonable notice of the application be given by the Director-General to any person who is a surety to the recognizance so that he may be given a reasonable opportunity of calling such evidence and making such representations to the court as may be relevant to the application.

(4) Where pursuant to subsection (2) of this section or an order under subsection (3) of this section—

(a) the Director-General is required to give notice of an application to a child or to a person who is a surety to the recognizance;

or

- (b) a person who is a surety to the recognizance is required to give notice to a child,

and the Director-General or the person so required to give notice satisfies the juvenile court that it is not reasonably practicable to give the required notice, the court may waive compliance with the provision of subsection (2) of this section or an order under subsection (3) of this section and proceed to hear and determine the application.

(5) Where an order is made under this section varying the conditions of a recognizance, the recognizance shall have effect as varied in accordance with the order.

(6) An application may be made under this section for an order varying the conditions of a recognizance, or discharging the recognizance, by a person subject to the recognizance who has attained the age of eighteen years, and in such a case the court may deal with the application in all respects as if the applicant were a child.

47. Where a child enters into a recognizance, or the conditions of a recognizance are varied, under this Act the clerk of the juvenile court shall furnish the child with a notice in writing stating in simple language the conditions that the child is required to observe.

Child to receive explanation of recognizance.

48. (1) If a complaint upon oath alleging that a child who is subject to a recognizance under this Part has failed to observe any of the conditions of his recognizance comes before a juvenile court, the court may—

Breach of recognizance.

- (a) issue a warrant for the apprehension of that child;

or

- (b) issue a summons to that child, and to any other person who is a surety to the recognizance, requiring the child or other person to appear before a juvenile court at such time as may be specified in the summons or summonses.

(2) Where a warrant has been issued and the child apprehended he shall be brought before a juvenile court.

(3) Subject to this section, the juvenile court may, upon being satisfied that the child subject to the recognizance has failed to observe any of its conditions, make an order adjudging the recognizance to be forfeited and—

- (a) without further proof, make any order that a juvenile court had power to make in dealing originally with the complaint or information upon which the recognizance was ordered;

and

(b) make an order for the payment of any amounts due under the recognizance.

(4) No order shall be made under subsection (3) of this section in the absence of any child or person sought to be bound thereby unless that child or person is present at the hearing or unless the court is satisfied that a summons was duly served upon that child or person at least seven clear days before the return thereof or unless the court is satisfied by other means that that child or person had due and proper notice of the proceedings.

(5) Any order under this subsection against a child for the payment of any amount due under a recognizance may be enforced subject to the provisions of this Act, and an order under this subsection against a person who has attained the age of eighteen years for the payment of any amount due under a recognizance may be enforced as if it were an order for the payment of money made by justices upon summary conviction of that person.

(6) Where a person, in respect of whom a complaint may be made alleging that he has failed to observe any of the conditions of a recognizance entered into as a result of an order of a juvenile court, is of or above the age of eighteen years the complaint shall not be laid in a juvenile court but may be laid in a court of summary jurisdiction which may deal with that person in all respects as if the recognizance were a recognizance under the Offenders Probation Act, 1913-1971.

Limitation upon powers of court constituted of justices.

49. (1) A juvenile court constituted of justices or a special justice shall not order that a child be placed under the care and control of the Minister.

(2) If a juvenile court so constituted is of the opinion that the child should be placed under the care and control of the Minister, it shall, by memorandum, and in accordance with the appropriate provisions of this Act, refer the case to the Adelaide Juvenile Court or to some other juvenile court constituted of a Judge or special magistrate.

Power of juvenile court to disqualify child from holding or obtaining a driver's licence.

50. (1) In addition to the powers of a court of summary jurisdiction contained in the Road Traffic Act, 1961-1969, or any other Act, to make an order disqualifying a person from holding or obtaining a licence to drive a motor vehicle, a juvenile court may, in addition to any other order it may make upon a charge for any offence being proved against a child, make an order disqualifying the child from holding or obtaining a licence to drive a motor vehicle—

(a) as from a day or time specified in the order;
and

(b) either for a period specified in the order or until further order,

if the court is satisfied, having regard to all the facts and circumstances before the court, that the child is not a fit and proper person to hold or obtain such a licence.

(2) The powers of the court under subsection (1) of this section may be exercised upon the charge being proved and with or without a conviction being recorded.

(3) An order made under this section shall have the same force and effect as if it were an order made by the court under section 168 of the Road Traffic Act, 1961-1969.

(4) Where a juvenile court constituted of a Judge or special magistrate, is satisfied that it is just and expedient to do so, it may, at any time, upon application by or on behalf of a child disqualified from holding or obtaining a licence under this section, vary or revoke an order under this section.

(5) The powers conferred on a juvenile court under subsection (4) of this section are in addition to, and do not in any way derogate from, the powers exercisable under section 172 of the Road Traffic Act, 1961-1969.

51. (1) A juvenile court, constituted otherwise than of a Judge, shall not exercise the powers conferred under section 77 or section 77a of the Criminal Law Consolidation Act, 1935-1969.

Exercise of powers in relation to sexual offences.

(2) The powers referred to in subsection (1) of this section may be exercised by a juvenile court constituted of a Judge upon proof of the commission by a child of any of the offences to which those provisions apply whether or not a conviction is recorded.

52. (1) In addition to or in lieu of exercising any other powers of a juvenile court, a juvenile court constituted of a Judge or special magistrate may, subject to this section, on the application of the prosecutor, order a child against whom any charge for an offence before that court has been proved or the parent or guardian of that child or any two or more of those persons to pay compensation, or make restitution in respect of any damage or loss occasioned by the offence to any person who has suffered that damage or loss.

Power of juvenile court to order compensation or restitution.

(2) The amount that a court may order any child or person to pay under this section shall not exceed—

(a) where the juvenile court is constituted of a Judge, eight hundred dollars;

or

(b) where the juvenile court is constituted of a special magistrate, four hundred dollars.

(3) Before making an order under this section, the court may require proof of the amount of loss or damage occasioned by the offence.

(4) If the court, after hearing evidence, is of the opinion that the evidence is not sufficient to enable it to determine the amount of the damage or loss, it may decline to make an order.

(5) Subject to subsection (2) of this section, an order under this section may direct the child, parent or guardian to pay such sum as the court thinks reasonable either as one payment or by instalments, and when making the order, the court shall have regard to the means of the child, parent or guardian against whom the order is made and, in the case of the parent or guardian, the extent, if any, to which the parent or guardian has, by his conduct or neglect or otherwise, conduced to the commission of the offence.

(6) Any order under this section may be enforced against the person against whom it is made in the same manner as if it were an order for the payment of money made by justices upon summary conviction of that person.

(7) An order under this section may be made against a child, parent or guardian present at the hearing in question, or against any parent or guardian who, having been required to attend the court during the hearing pursuant to an order of the court, has failed to do so but otherwise no such order shall be made without giving the child, parent or guardian an opportunity of being heard.

(8) An order under this section shall not be a bar to any other proceedings by or on behalf of the person who suffered the damage or loss, but such person shall not be entitled to recover, in respect of such damage or loss, a greater amount than the amount of the damage or loss suffered by him.

(9) The powers of a juvenile court under this section may be exercised upon the relevant charge being proved and with or without a conviction being recorded against the child.

(10) It shall not be competent for a juvenile court to exercise powers conferred under the Criminal Injuries Compensation Act, 1969.

53. (1) Where a child is committed to the Supreme Court for trial and found guilty of an offence (other than homicide) the Court may, in its discretion—

(a) make any order in relation to the child or his parent or guardian that may be made by a juvenile court constituted of a Judge;

or

(b) remand the child to appear before a juvenile court constituted of a Judge or special magistrate to be dealt with as provided by this section.

(2) Where the Supreme Court remands a child to appear before a juvenile court under this section—

(a) it may give such directions as it thinks necessary for the custody of the child or for his release on bail and shall cause to be transmitted to the juvenile court a certified copy of the proceedings in the case and a certificate certifying—

- (i) the nature of the offence;
 - (ii) that the child has been found guilty of that offence;
 - (iii) that the child has been remanded in custody or on bail to be dealt with in pursuance of this section;
- and
- (iv) any other matters that the Supreme Court thinks ought to be brought to the notice of the juvenile court;

and

(b) the juvenile court may deal with the child as if the child had been tried and found guilty of the offence by that court.

54. Where a child has been charged with homicide (other than homicide amounting to murder) and been found guilty by the Supreme Court, that court may exercise its discretion on the question of penalty within the limits provided for the offence under the Criminal Law Consolidation Act, 1935-1969, or the court may make any order that could be made by a juvenile court constituted of a Judge against a child who has been convicted by that court of an offence punishable by imprisonment.

Punishment of children for homicide.

55. (1) On conviction of a child for murder the Supreme Court shall, by order, sentence him to be detained during the Governor's pleasure, and if so sentenced, he shall be detained in such place and under such conditions as the Governor may direct.

Punishment of children for murder.

(2) Where an order is made under subsection (1) of this section, the child shall, until the Governor has given directions as to the detention of the child, be detained in a home or some other suitable place specified by the court.

(3) A person detained pursuant to the directions of the Governor under this section shall, while so detained, be deemed to be in lawful custody.

(4) Any person so detained may, at any time, be discharged by the Governor on licence which may be in such form and may contain such conditions as the Governor directs, and may, at any time, be revoked or varied by the Governor.

PART V

(5) Where a licence has been revoked, the person to whom the licence related shall return to such place as the Governor directs, and, if he fails to do so, may be apprehended without warrant and taken to that place and there detained.

PART VI

PART VI

PROVISION RELATING MAINLY TO NEGLECTED AND UNCONTROLLED CHILDREN AND HABITUAL TRUANTS

Neglected and uncontrolled children and habitual truants.

56. (1) Subject to this Act, where a juvenile court finds a complaint alleging that a child is a neglected child, or an uncontrolled child proved, the court may, by order, place the child under the care and control of the Minister.

(2) Subject to subsection (3) of this section, where a child is placed under the care and control of the Minister, the order shall, if it does not in fact so provide, be deemed to provide that the child shall remain under the care and control of the Minister until he attains the age of eighteen years.

(3) If any child at the time of being placed under the care and control of the Minister is of or above the age of sixteen years the child may be committed to the control of the Minister—

(a) until he attains the age of eighteen years;

or

(b) for not less than one year nor more than two years.

(4) Before making an order under this section placing a child under the care and control of the Minister the court shall consider the welfare of the child and the desirability of removing him from his existing social environment and, in the case of an uncontrolled child, shall not make any order until a report on the child has been made by an assessment centre.

(5) The court, upon finding a complaint alleging that a child is a neglected or uncontrolled child proved, may adjourn the case for a period not exceeding three months, and for the period of the adjournment may place the child under the care and control of the Minister.

(6) Notwithstanding anything contained in subsection (5) of this section the court may on the application of an officer of the department, order that the child be brought before the court at any time during the period of the adjournment and the child shall be brought before the court accordingly.

(7) When a child is brought before a juvenile court following an adjournment under subsection (5) or upon an order made under subsection (6) of this section, the court may—

(a) dismiss the complaint or allow the withdrawal of the complaint if satisfied that satisfactory arrangements have been made for the child's welfare and that he is no longer a neglected child or an uncontrolled child;

or

(b) make an order under subsection (1) of this section.

(8) No order shall be made under subsection (1) or (3) of this section in respect of a neglected child or an uncontrolled child without notice of the complaint in question being served on the parent or guardian of the child having the immediate custody and control of the child unless the whereabouts of the parent or guardian are unknown.

(9) The notice shall be deemed to be sufficiently served if 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 complaint.

(10) Where pursuant to this section, a juvenile court makes an order placing a child under the care and control of the Minister, it may make an ancillary order committing the child to a home for a period not exceeding twenty-one days.

57. (1) Where a juvenile court finds a complaint that a child is an habitual truant proved, it may, subject to this section, make any order or adjudication that it is empowered to make upon finding a complaint that a child is in need of care and control proved.

Habitual
truancy.

(2) Where a court pursuant to subsection (1) of this section orders that a child be placed under the care and control of the Minister, the order shall, if it does not in fact so provide, be deemed to provide that the child shall remain under the care and control of the Minister until he reaches an age at which he is no longer required by law to attend school.

(3) Where a juvenile court proposes to make an order placing an habitual truant under the care and control of the Minister, the provisions of section 56 of this Act shall, subject to this section apply *mutatis mutandis* in respect of the child in the same manner as they apply in respect of an uncontrolled child.

58. (1) Notwithstanding anything contained in any Act, a complaint (whether laid before or after the commencement of this Act) alleging that a child is a neglected child, or an uncontrolled child or an habitual truant shall be deemed not to be a complaint charging the child with committing an offence within the meaning

Special
provisions
relating to
complaint
charging child
with being a
neglected or
uncontrolled
child.

PART VI

of this Act or any other Act, and any child in respect of whom such a complaint is proved shall be deemed not to be guilty or convicted of an offence in respect of that complaint.

(2) When hearing a complaint alleging that a child is a neglected child, an uncontrolled child or an habitual truant—

(a) the court shall not be bound by the laws or rules of evidence and may admit any evidence which, in the opinion of the court, will assist it to determine the complaint in a manner which appears to the court to be in the best interests of the child;

and

(b) the court shall determine the complaint in the manner which appears to the court to be in the best interests of the child.

Limitation upon powers of justices.

59. (1) A juvenile court constituted of justices or a special justice shall not make an order placing a child who has been found to be a neglected or uncontrolled child or an habitual truant under the care and control of the Minister.

(2) If a juvenile court constituted of justices or a special justice is of the opinion that a neglected or uncontrolled child or an habitual truant should be placed under the care and control of the Minister, the court shall, by memorandum and in accordance with the appropriate provisions of this Act, refer the case to a juvenile court constituted of a Judge or special magistrate.

Power to apprehend neglected or uncontrolled child, etc., without warrant.

60. (1) Any officer of the department or member of the police force may, without a warrant, apprehend any child appearing to him or suspected by him to be a neglected child, an uncontrolled child, a child liable to proceedings under this Act as a child in need of care and control, or an habitual truant.

(2) A member of the police force may enter into or upon any house, building, or other premises for the purpose of apprehending and may, there or elsewhere, apprehend any child who is reasonably suspected of having committed an offence or of being a neglected child, an uncontrolled child or an habitual truant.

(3) Where a child apprehended under any provision of this section is charged with any offence or with being a neglected child, an uncontrolled child, a child in need of care and control or an habitual truant he shall, as soon as conveniently possible, be brought before a juvenile court so that the matter alleged against him may be heard and determined.

PART VI

61. (1) Where a complaint is laid alleging that a child is a neglected child, an uncontrolled child, a child in need of care and control or an habitual truant, any justice may summon the child to appear before a juvenile court at a time and place to be named in the summons so that the complaint against him may be heard and determined.

Issue of summons or warrant on complaint.

(2) A justice may, instead of issuing a summons, issue a warrant under his hand for the apprehension of the child and for his detention in a home or other suitable place (not being a prison) until the hearing of the complaint.

(3) A child so apprehended shall, as soon as conveniently possible, be brought before a juvenile court so that the complaint against him may be dealt with in accordance with the provisions of this Act.

(4) Any child brought before a juvenile court and alleged to be a neglected child, an uncontrolled child, a child in need of care and control, or an habitual truant may be dealt with by the court as provided by this Act notwithstanding that the child has not been summoned or that a warrant has not been issued for the apprehension of the child.

62. (1) Any proceedings under this Act relating to a neglected child or an uncontrolled child may be taken by the Director-General or any officer of the department who is authorized by the Director-General to take proceedings and all such proceedings may be conducted by that officer or any other officer of the department who is so authorized.

Power to take proceedings against neglected or uncontrolled children.

(2) A document purporting to be signed by the Director-General stating that the person therein named is an officer of the department, and is authorized by the Director-General to take proceedings or conduct cases under this Act shall be evidence of the facts so stated.

(3) Where a juvenile court is aware of its own knowledge that a person is an officer of the department duly authorized as provided by this section, the court may take judicial notice of that fact, in which case no proof of identity or authorization shall be required.

63. Where a child under the age of twelve years is alleged to be a neglected child, an uncontrolled child, a child in need of care and control, or an habitual truant, and is remanded to a home in pursuance of this Act, the presence of the child before the court or justice shall not be required while the court or justice hears any applications or makes any order for a further remand of the child unless the court or justice otherwise orders.

Remand of child under twelve years.