



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. 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 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:—

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.

Repeal
provision.

(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

PART II

(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—

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

(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,

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.

Variation or
discharge of
orders.

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

DIVISION I—SCREENING PANELS

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.

PART IV

DIVISION II

Children's
aid panel
must notify
child of
proceedings.

33. (1) Where—

(a) it is alleged that a child is a truant;

or

(b) a screening panel has certified that a matter is to be heard before a children's aid panel,

the children's aid panel shall forthwith notify the child of the date, time and place at which he must appear before the panel.

(2) A notice given to a child under subsection (1) of this section—

(a) must state the allegations made against the child and specify the offence the child is alleged to have committed;

and

(b) must contain a statement to the effect that if the child does not admit the allegations he may notify the children's aid panel accordingly, and that if he does so notify the panel, his case will be brought before the Children's Court.

(3) Where a child notifies the children's aid panel that he does not admit the allegations made against him, a complaint shall thereupon be laid against the child for the alleged offence.

Social
background
and other
reports.

34. (1) Upon the request of a children's aid panel, the Commissioner of Police or the Director-General, or, in the case of truancy, the Director-General of Education, shall cause to be prepared for the information and guidance of the children's aid panel a report setting out, as far as may be reasonably ascertainable and relevant to the matter under consideration, details of the alleged offence and of the personal circumstances and social background of the child the subject of the proceedings.

(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.

Duties and
powers of
children's
aid panels.

35. (1) Before a children's aid panel proceeds to deal with a child, the panel—

(a) must explain to the child the allegations that have been made against him;

(b) must satisfy itself that the child admits the allegations;

(c) must inform the child that he is entitled to request, at any stage of the proceedings, that the matter be referred to the Children's Court for hearing and determination;

and

(d) must explain to the child the implications to the child according to whether he is dealt with by the panel under this Division or his case is brought before the Children's Court.

(2) A children's 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 guardians;

- (b) the panel may request the child to undertake, in writing, to comply with such directions as may be given by the panel, including directions as to any training or rehabilitative programme to be undergone by the child;
 - (c) the panel may request a guardian of the child to undertake, in writing, to comply with such directions as may be given by the panel to assist or supervise the child in any training or rehabilitative programme to be undergone by the child;
 - (d) the panel may vary the terms of any undertaking on the application of the child or a guardian of the child, but not so as to extend the period of the undertaking;
- and
- (e) the panel may, at any time within the period of an undertaking, request the child to give a fresh undertaking in substitution for that existing undertaking, but not so as to extend the period of that undertaking.

(3) A children's aid panel may require that an undertaking be given for such period of time, not exceeding six months, as it thinks fit.

(4) No undertaking shall require a child to change his place of residence.

36. (1) A children's aid panel shall refer a matter before the panel to the Children's Court where—

(a) the child, at any stage of the proceedings, requests that the matter be heard and determined by the Court;

or

(b) the offence is not admitted by the child.

(2) A children's aid panel may refer a matter before it to the Children's Court where—

(a) the child, or a guardian of the child, does not appear before the panel in accordance with a requirement of the panel;

(b) the child, or a guardian of the child, refuses to give an undertaking requested by the panel;

or

(c) the child breaches an undertaking within the period of the undertaking.

(3) Where a matter is referred by a children's aid panel to the Court, 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 guardian of the child of the decision of the panel to refer the matter.

37. (1) Subject to subsection (2) of this section, where a child is dealt with by a children's aid panel, no criminal proceedings may be brought in any court against the child for the alleged offence.

(2) Where a children's aid panel has referred a matter to the Children's Court, a complaint shall thereupon be laid against the child in respect of the alleged offence, notwithstanding any time limits provided under the Justices Act, 1921-1976, or any other Act.

Panel to refer matter to Children's Court in certain circumstances.

Procedure on decision of children's aid panel.

PART IV**DIVISION II**

No legal representation at panel hearings, etc.

38. (1) A child appearing before a children's aid panel shall not be represented by any person, but the panel shall hear submissions from the child, or any guardian of the child, and may, at its own discretion, hear submissions from any person who has been counselling, advising or aiding the child.

(2) No person other than the child, any guardian of the child, or any other person authorized by the panel, shall be present at a sitting of a children's aid panel.

(3) A children's aid panel is not empowered to authorize a representative of the news media to be present at a sitting of the panel.

Certain evidence not admissible.

39. Nothing said or done in any proceedings before a children's aid panel shall be admissible as evidence in any subsequent proceedings in respect of the offence the child is alleged to have committed.

Appearance of child before children's aid panel not to be disclosed.

40. Subject to this Act, no appearance of a child before a children's aid panel—

(a) may be alleged in any proceedings before a court other than a court exercising any jurisdiction under this Act;

or

(b) may be disclosed, except with the approval of the Minister, by any body or person exercising any powers under this Act in relation to the child.

Places at which children's aid panels shall not sit.

41. A children's 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.

DIVISION III**DIVISION III—APPREHENSION AND REMAND**

Apprehension.

42. (1) Where a complaint is laid alleging that a child has committed an offence, any justice may summon the child to appear before the Children's Court at a date, time and place named in the summons or may, instead of issuing a summons, issue a warrant under his hand for the apprehension of the child.

(2) Any member of the police force may, without warrant, apprehend any child who is reasonably suspected of having committed an offence.

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

(4) Any child who is apprehended, whether under this section or any other Act or law, shall, if he is not granted bail under section 43 of this Act, be detained by the Director-General with a person (where practicable), or in a place (other than a prison), approved by the Minister and shall (unless he has been released from detention pursuant to a decision of a screening panel) be brought before the Children's Court for the purpose of remand not later than the next working day following the day on which he was apprehended.

Bail by police or justices.

43. (1) Where a child is apprehended he shall be delivered into the custody of a member of the police force in charge of any police station, and that member may, if he deems it prudent, take bail by recognizance, with or without sureties, without any fee or reward, the condition of the recognizance being that the child shall appear before the Children's Court at a date, place and time specified in the recognizance.

(2) Where a member of the police force does not admit a child to bail under subsection (1) of this section, he shall, upon the request of the child or a guardian of the child, forthwith bring the child before a justice for the hearing and determination by the justice of a further application for bail.

44. (1) Subject to this section, a child may from time to time be remanded by the Court at any stage of any proceedings under this Part, and upon any remand the Court may, by order—

Powers of
Court upon
remand.

- (a) allow the child to go at large;
 - (b) release the child upon bail upon such conditions as the Court thinks fit;
 - (c) release the child into the custody of any suitable person;
- or
- (d) remand the child in custody—

- (i) where the Court has committed the child to an adult court for trial pursuant to any of the provisions of this Part—until the child is released or delivered in due course of law;

or

- (ii) in any other case—for a period not exceeding twenty-eight days,

to be detained in a place (other than a prison) approved by the Minister.

(2) A child shall not be remanded in custody unless in the opinion of the Court—

- (a) the child is likely to abscond;
- or
- (b) it is necessary for the protection of the child, the general public, or any person or property, that the child be remanded in custody.

(3) The Court may revoke any order made under subsection (1) of this section and may substitute therefor any other order it is empowered to make under that subsection.

DIVISION IV—TRIAL AND SENTENCING

DIVISION IV

45. Where a child is charged with homicide he shall be tried in the Supreme Court.

Homicide to
be tried in
Supreme Court.

46. (1) Subject to section 47 of this Act, where a child who is charged with an indictable offence requests trial by jury in an adult court, the Children's Court—

Committal
to adult
court at
request of
child.

- (a) if it is satisfied that the child has received independent legal advice with respect to the implications to him of trial in an adult court, shall conduct a preliminary examination;

and

- (b) if it is then satisfied that there is a case to answer, shall commit the child for trial in the appropriate adult court.

PART IV
DIVISION IV

(2) A child may not make a request under this section—

(a) if determination of an application made by the Attorney-General under section 47 of this Act is pending;

or

(b) if, pursuant to such an application by the Attorney-General, an order has been made that the child be tried in an adult court.

Committal to adult court for trial or sentencing upon application by Attorney-General.

47. (1) Where the Attorney-General is of the opinion that a child charged with an indictable offence (other than a minor indictable offence) should, by reason of the gravity of the circumstances of the offence, or the fact that the child has previously been found guilty of more than one serious offence, be tried in the appropriate adult court, the Attorney-General may apply to a Judge of the Supreme Court for an order that the child be so tried.

(2) An application by the Attorney-General for an order that a child be tried in an adult court may be made at any time before any plea is taken from the child by the Children's Court.

(3) Where a member of the police force who has laid a complaint against a child is of the opinion that the child is one in respect of whom the Attorney-General is likely to exercise his powers under this section, that member may notify the Children's Court accordingly and the Children's Court shall not proceed to deal further with the child except by way of remand until the Attorney-General advises the Court that no such application is to be made, or until any such application is determined or withdrawn.

(4) The Attorney-General shall, in any application made by him under this section, set out the facts upon which the application is made and furnish a copy of the statement of any proposed witness for the prosecution.

(5) The Attorney-General shall cause a copy of the application to be served upon the child and each guardian of the child whose whereabouts is known to the Attorney-General, and the application must be endorsed with a notification of the place, date and time for the hearing of the application.

(6) The Judge shall hear any submissions made by the child and by any guardian of the child who is present at the hearing of the application.

Preliminary examination.

48. The Children's Court shall conduct a preliminary examination in relation to a child who is, by virtue of any provision of this Act, to be tried in an adult court.

Provisions relating to pleas in the Children's Court.

49. (1) Where a child is charged with any offence, he shall, unless he is to be tried in an adult court pursuant to this Act, plead guilty or not guilty to the charge at the commencement of the hearing in the Children's Court, and the Court shall proceed to deal with the matter summarily.

(2) Where a child has pleaded guilty to a charge of an offence, the Court may, at any stage of the proceedings, if it is of the opinion that the child may not be guilty of the offence charged, order that the plea of guilty be withdrawn and a plea of not guilty be entered.

(3) Where the Court has exercised its powers under subsection (2) of this section, the child is not entitled to plead *autrefois convict* by reason of his plea of guilty.

Provisions relating to verdict of Court.

50. (1) Where a child charged with an indictable offence is before the Children's Court, the Court has full power to record any alternative verdict that an adult court may record in relation to the offence charged.

(2) In any proceedings before the Children's Court under this Part the Court must deliver its verdict not later than five o'clock in the afternoon of the fifth working day after the day on which the hearing of evidence and addresses by counsel (if any) is concluded.

(3) Nothing in this section renders invalid any verdict given after the expiration of the period referred to in subsection (2) of this section.

(4) Nothing in this section renders unlawful the detention of a child until a verdict is delivered.

(5) Any verdict of the Court in relation to an indictable offence (other than a minor indictable offence) must be accompanied by a statement of the reasons of the Court in reaching that verdict.

51. (1) Subject to this Act, where the Children's Court finds a charge (other than a charge of truancy) proved against a child, the Court may, by order—

Powers of
Court on
finding child
guilty.

- (a) upon convicting the child, sentence him to a period of detention of not less than two months nor more than two years in a training centre, but no period of detention may be ordered unless the Court has first obtained a report on the child and his circumstances from an assessment panel;
- (b) upon convicting the child, or without convicting the child, discharge the child upon his entering into a recognizance with or without sureties, upon condition that he will be of good behaviour and will appear before the Court for sentence if he fails during the term of the recognizance to observe any of its conditions, and upon any one or more of the following conditions that the Court may think fit to include in the recognizance—
 - (i) that he will be under the supervision of an officer of the Department or other person nominated by the Director-General and will obey the directions of that officer or person;
 - (ii) that he will attend a youth project centre at such times as may be stipulated in the recognizance or required of him by the Director-General and will obey any directions that may be given to him by or on behalf of the person in charge of that centre;
 - (iii) that he will participate in such project or programme as the Director-General may require;
 - (iv) that he will reside with such person, or in such place, as may be stipulated in the recognizance;
 - (v) that he will attend before the Court at such times as may be specified in the recognizance for the purpose of reviewing his progress or circumstances;

and

 - (vi) any other condition that the Court may think necessary or desirable;
- (c) upon convicting the child, or without convicting the child, impose a fine not exceeding—
 - (i) the maximum fine prescribed under the relevant Act or law for the offence;

or

(ii) five hundred dollars,
whichever is the lesser;

or

(d) without convicting the child, discharge the child without penalty.

(2) The Children's Court is not empowered—

(a) to sentence a child to imprisonment;

or

(b) to fine a child, require a child to enter into a recognizance or disqualify a child from holding or obtaining a licence to drive a motor vehicle, otherwise than in accordance with this Part.

(3) Subject to this Act, the Court may make any other order that is provided for under any Act or law in relation to the offence of which the child has been found guilty.

(4) The Court may exercise its powers under both paragraphs (b) and (c) of subsection (1) of this section in respect of the same offence.

(5) A recognizance under this section—

(a) shall be effective for such period of time, not exceeding two years;
and

(b) shall bind the child for such sum, not exceeding two hundred dollars in the case of a simple offence or a minor indictable offence,

as may be specified in the recognizance.

(6) Where the Court has convicted a child and sentenced him to a period of detention, the Court may suspend the sentence upon the child entering into a recognizance with or without sureties, upon condition that he will be of good behaviour and upon any one or more of the other conditions referred to in paragraph (b) of subsection (1) of this section.

(7) Where a child whose sentence has been suspended pursuant to subsection (6) of this section complies with the conditions of the recognizance, the sentence of detention shall, upon the expiration of the period of the recognizance, be wholly extinguished.

(8) Where the Court is of the opinion that a child of any age who has been found guilty of an offence is not a fit and proper person to hold or obtain a licence to drive a motor vehicle, or that disqualification is an appropriate penalty for the offence committed, the Court may, in addition to any other orders it may make in relation to the child, with or without convicting the child, make an order disqualifying the child from holding or obtaining such a licence, except for such purposes (if any) as may be specified in the order—

(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.

(9) Upon application by the child, a Judge or special magistrate of the Court may, if he is satisfied that it is just or expedient to do so, vary or revoke any order for disqualification made under subsection (8) of this section.

(10) A child is not entitled to apply to a court of summary jurisdiction for an order removing his disqualification pursuant to section 172 of the Road Traffic Act, 1961-1979, until he has attained the age of eighteen years.

(11) Subject to this Act, the Court shall, before dealing with a child under this section, have regard to all the facts and circumstances relating to the child and the offence that are known to the Court, and the Court may exercise its discretion on the question of penalty as provided by this section without being bound by a minimum penalty (if any) prescribed in any Act for the offence proved against the child.

(12) Where the Court has found a charge of a group I or group II offence proved against a child, the Court shall record a conviction unless there are, in the opinion of the Court, special reasons for not recording a conviction against the child, and the Court states those reasons in its judgment.

52. Where the Children's Court finds a charge of truancy proved against a child, the Court may in relation to that charge make an order under paragraph (b) or paragraph (d) of subsection (1) of section 51 of this Act.

Sentencing
for truancy.

53. (1) Where the Children's Court imposes a fine upon a child who has been found guilty of an offence, the Court may, after determining the amount that it believes ought properly to be imposed, reduce the amount of the fine to such extent as it thinks fit, having regard to the means of the child, and his ability to pay any fine so imposed.

Court may
reduce
fine in
certain
circumstances.

(2) The Court may, in imposing a fine upon a child, order that the fine be paid at such time, or in such instalments, as the Court thinks fit.

54. (1) Subject to subsection (2) of this section, the following matters shall be dealt with by a Judge of the Children's Court:—

How
jurisdiction
under this
Part is to
be exercised.

(a) the hearing of a group I or group II offence;
and

(b) the making of any order in relation to a child pursuant to section 77 or 77a of the Criminal Law Consolidation Act, 1935-1976, whether or not the Judge tried that child.

(2) Where it is not reasonably practicable for a Judge of the Court to deal with any matter referred to in paragraph (a) of subsection (1) of this section, the Senior Judge may direct that a special magistrate of the Court deal with the matter.

(3) A Judge or a special magistrate of the Court shall hear any group III offence.

(4) A special justice or justices of the peace may not, in sentencing a child—

(a) sentence him to detention;

(b) impose a fine exceeding one hundred dollars;

or

(c) require the child to enter a recognizance for more than one year, or upon any condition other than that the child be of good behaviour.

(5) A special magistrate of the Court may not, in sentencing a child—

(a) sentence him to detention for more than one year;

or

(b) impose a fine exceeding three hundred dollars.

PART IV
DIVISION IV

(6) Where a special magistrate, a special justice or justices of the peace is, or are, of the opinion that an order should be made in relation to the child before the Court that he is not, or they are not, by virtue of this section, empowered to make, he, or they, shall remand the child for sentence and forthwith refer the matter to the Senior Judge, who shall give such directions as he thinks fit as to which member of the Court shall sentence the child.

How children
who have
committed
murder are to
be dealt with.

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.

(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 by the Director-General in a place (other than a prison) approved by the Minister.

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

(4) The Governor may, at any time, on the recommendation of the Parole Board or, where the child is detained in a training centre, on the recommendation of the Training Centre Review Board, discharge any child so detained, on licence.

(5) The licence shall be in such form and contain such conditions, as the Governor may, on the recommendation of the Parole Board or the Training Centre Review Board, as the case may be, determine.

(6) The Governor may, from time to time, on the recommendation of the Parole Board or the Training Centre Review Board, as the case may be, vary the conditions of a licence under this section.

(7) The Governor may revoke a licence under this section for breach of any condition.

(8) Where a licence has been revoked—

(a) the child to whom the licence related may be apprehended without warrant and returned to a place determined by the Governor for further detention;

or

(b) a Justice of the Peace may, on the application of the Crown Solicitor or a police officer of or above the rank of Inspector, issue a warrant for the arrest of that child and for his return to a place determined by the Governor for further detention.

Sentencing
of children
guilty of
homicide
or committed
to adult court
on application
of Attorney-
General.

56. Where a child—

(a) has been found guilty by the Supreme Court of homicide (other than homicide amounting to murder);

or

(b) has been found guilty by an adult court of any other offence pursuant to an application by the Attorney-General that the child be tried in that court,

that court may—

- (c) deal with the child as if he were an adult;
- (d) make any order in relation to the child that could be made by the Children's Court if it were dealing with the child, or were empowered to deal with the child;
- or
- (e) remand the child to the Children's Court for sentencing.

57. Where a child is committed to an adult court for trial at his own request the adult court may—

Sentencing of children who requested trial in an adult court.

- (a) make any order in relation to the child that could be made by the Children's Court if it were dealing with the child;
- or
- (b) remand the child to the Children's Court for sentencing.

58. (1) Where an adult court has sentenced a child as an adult and has ordered that he serve a term of imprisonment, such term shall, subject to subsection (2) of this section, be served in a prison.

Detention of child sentenced as adult.

(2) An adult court that has sentenced a child to imprisonment may, by order, direct that the child be detained in a training centre for such period of the sentence as the Court thinks fit, but not extending beyond the time at which the child attains the age of eighteen years.

(3) Where an order has been made in respect of a child pursuant to subsection (2) of this section—

- (a) Part IVA of the Prisons Act, 1936-1976, shall not apply to or in relation to the child;
- and
- (b) Division VI of this Part shall apply to and in relation to the child, while he is in the training centre.

DIVISION V—SPECIAL PROVISIONS RELATING TO RECOGNIZANCES

DIVISION V

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

Variation or discharge of recognizance.

- (a) on application by the Minister, the child, or a surety to the recognizance, vary the conditions of the recognizance;
- or
- (b) on application by the Minister, the child, or a guardian of the child, and on being satisfied that the child's conduct has been such that it is unnecessary or undesirable that he should remain subject to the conditions of the recognizance, discharge the recognizance.

(2) Subject to subsection (3) of this section, no order shall be made under subsection (1) of this section on an application by the Minister, unless the child, the Commissioner of Police and any surety to the recognizance have received reasonable notice of the application and have been given a reasonable opportunity of calling such evidence and making such representations to the court as may be relevant to the application.

(3) The court may, by order, dispense with the giving of notice of any application under this section in such circumstances as it thinks fit.

(4) Where the child, a guardian of the child or a surety to the recognizance makes an application under this section, the court shall cause notice of the application to be given to the Minister and the Commissioner of Police.

(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 notwithstanding that he 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.

Explanation
and review of
recognizances.

60. (1) Where a child enters into a recognizance, or the conditions of a recognizance are varied, under this Part, the court itself shall explain the recognizance to the child and shall cause the child to be furnished with a notice in writing stating in simple language the conditions that the child is required to observe.

(2) The Minister shall cause a review to be made of the progress and circumstances of a child who is under the supervision of a person pursuant to a condition of his recognizance, at least once in each period of six months during the term of the recognizance.

Breach of
recognizance.

61. (1) Subject to this section, where the Minister or the Commissioner of Police considers that a child who has entered into a recognizance under this Part before the court has failed to observe any of the conditions of the recognizance, he may cause a complaint to be laid in that court.

(2) Upon a complaint being laid under subsection (1) of this section, the court may—

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

or

(b) issue a summons to the child, and serve a notice upon any surety to the recognizance, requiring the child and any such surety to appear before the court at the place, date and time specified in the summons or notice.

(3) Where a child has been apprehended pursuant to this section, he shall be brought before the court as soon as is reasonably practicable, and may be detained by the Director-General in any place (other than a prison) approved by the Minister until he is so brought before the court.

(4) Subject to subsection (5) of this section, the court may—

(a) on the hearing of a complaint laid under subsection (1) of this section;

or

(b) on the oral application of the prosecutor in any proceedings before the court for an offence to which the child has pleaded guilty,

upon being satisfied that the child has failed to observe any condition of the recognizance, make an order that the recognizance be forfeited and—

(c) without further proof, make any order in relation to the child that the court had power to make in dealing originally with the child for the offence to which the recognizance relates;

or

(d) make an order for the payment of any amount, or part of any amount, due under the recognizance.

(5) Where the child has been sentenced to detention for the offence and the sentence has been suspended, the court shall, upon being satisfied that the child has failed to observe any condition of the recognizance, forthwith order that the suspension be revoked and the sentence carried into effect.

(6) No order shall be made under this section against the child or any surety—

(a) unless the child, or the surety, as the case may be, is present at the hearing;

or

(b) unless a summons was duly served on the child, or a notice was duly served on the surety, at least seven clear days before the date of the hearing.

(7) An order made under paragraph (d) of subsection (4) of this section may be enforced as if it were an order for the payment of money made upon summary conviction.

DIVISION VI—SPECIAL PROVISIONS RELATING TO DETENTION

DIVISION VI

62. (1) There shall be a board entitled the "Training Centre Review Board".

The Training
Centre
Review Board.

(2) The Training Centre Review Board shall consist of the following members:—

(a) the Judges of the Children's Court;

(b) two persons with appropriate skills and experience in working with young people, appointed by the Governor upon the recommendation of the Attorney-General;

and

(c) two persons with appropriate skills and experience in working with young people, appointed by the Governor upon the recommendation of the Minister.

(3) At least one of the persons appointed under paragraphs (b) and (c) of subsection (2) of this section shall be a woman and at least one such person shall be a man.

(4) An appointed member of the Training Centre Review Board shall hold office for such term, and upon such conditions, as the Governor determines and specifies in the instrument of his appointment and, upon the expiration of his term of office, shall be eligible for re-appointment.

(5) A member of the Training Centre Review Board shall be entitled to receive such allowances and expenses as the Governor may from time to time determine.

(6) The Governor may remove an appointed member of the Training Centre Review Board from office on the grounds of—

- (a) mental or physical incapacity;
- (b) dishonourable conduct;
- or
- (c) neglect of duty.

(7) The office of an appointed member of the Training Centre Review Board shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by notice in writing given to the Attorney-General;
- or
- (d) he is removed from office by the Governor pursuant to subsection (6) of this section.

(8) Upon the office of an appointed member of the Training Centre Review Board becoming vacant, a person shall be appointed to that office in accordance with this section.

(9) Where the office of an appointed member of the Training Centre Review Board becomes vacant before the expiration of the term of office for which he was appointed, the person appointed in his place shall be appointed only for the balance of that term.

(10) When sitting to review any matter under this Act, the Training Centre Review Board shall be constituted of—

- (a) a Judge, who shall be Chairman;
- and
- (b) two of the appointed members.

(11) When sitting to review the progress and circumstances of a child, the Training Centre Review Board shall permit the legal representative, or a guardian, of the child to make submissions to the Board.

Review of
detention
by Training
Centre
Review
Board.

63. Where a child has been sentenced to detention in a training centre, the Training Centre Review Board shall review the progress and circumstances of the child whilst he is in the training centre, at intervals of not more than three months, and at any other time upon the request of the Director-General.

Conditional
release from
detention by
Training
Centre Review
Board.

64. (1) The Training Centre Review Board may authorize the Director-General to grant a child periods of leave from a training centre during which the child will not be subject to the supervision of the Director-General.

(2) The Training Centre Review Board may at any time order the release of a child who has been sentenced to detention in a training centre, subject to the following conditions:—

- (a) a condition that the child be under the supervision of an officer of the Department and that the child obey the directions of that officer;
- and
- (b) any other condition that the Board thinks fit.

(3) The conditions upon which a child is released from a training centre under this section shall be binding upon the child for the unexpired period of his detention order.

(4) Where the Minister considers that a child has failed to observe any condition imposed upon him by the Training Centre Review Board under this section, the Minister may apply to the Board for an order that the child be returned to a training centre.

(5) The Minister shall cause a copy of an application under subsection (4) of this section to be served upon the child and a guardian of the child, and the application must be endorsed with a notice of the place, date and time for the hearing of the application.

(6) Where a child cannot be found, or fails to attend before the Board on an application under this section, a member of the Board may issue a warrant for the apprehension of the child by a member of the police force or an officer of the Department authorized for the purpose.

(7) Where a child has been apprehended pursuant to subsection (6) of this section, he shall be brought before the Board as soon as is reasonably practicable, and may be detained by the Director-General in any place (other than a prison) approved by the Minister until he is so brought before the Board.

(8) If the Board finds the allegation proved it may order that the child be returned to detention under the original order.

65. (1) Where a child has been released from a training centre pursuant to section 64 of this Act, the Children's Court may, on the application of the child, a guardian of the child, or the Director-General made upon a recommendation of the Training Centre Review Board, order that the child be discharged absolutely from his detention order.

Absolute
release from
detention
by Court.

(2) An application under this section shall not be made if a previous application in respect of the child has been determined by the Court within the last preceding period of three months.

DIVISION VII—GENERAL PROVISIONS

DIVISION VII

66. It shall be conclusively presumed that no child under the age of ten years can commit an offence.

Age of
criminal
responsibility.

67. (1) Subject to subsection (2) of this section, a child shall not be charged jointly with a person who is not a child.

Prohibition
of joint
charges.

(2) Subsection (1) of this section shall not apply in relation to a charge against a child that is, pursuant to this Part, to be heard and determined by an adult court.

PART IV

DIVISION VII

Reports.

68. (1) Subject to subsection (3) of this section, no report relating to the social background or personal circumstances of a child shall be tendered to a court before the court has found an offence proved against the child.

(2) Where a child is found not guilty by a court, any report relating to the social background of the child prepared for the purposes of the proceedings shall be destroyed.

(3) This section does not prevent the court from receiving during the course of a hearing any psychiatric or medical evidence relating to the child, in so far as that evidence is relevant to the guilt or innocence of the child.

(4) The court in determining sentence shall not take into account any matter given in evidence, or appearing in any report presented, to the court, if the matter is disputed by the child, any guardian of the child or the prosecutor, unless the court has decided that the matter has been proved beyond reasonable doubt.

Attendance at court of guardian of child charged with offence.

69. (1) Where a child is before a court in any proceedings under this Part, the court may order that any 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.

(2) When the court makes an order under subsection (1) of this section, it may adjourn the hearing of the case, and shall cause the order to be served upon the guardian named therein.

(3) 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 penalty not exceeding five hundred dollars.

Counsellors, etc., may make submissions to court.

70. In any proceedings under this Part, a court may, upon the application of a person who has been counselling, advising or aiding the child the subject of the proceedings, or upon the application of any guardian of the child, hear any submissions that person or guardian wishes to make in respect of the child.

Assessment panel report must be obtained for referral to youth project centres.

71. A child shall not be required by a court to attend a youth project centre unless the court has first obtained and considered a report on the child from an assessment panel.

Duties of assessment panels under this Part.

72. 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 treatment, correction, or rehabilitation of the child as it thinks appropriate.

Power of Court to order compensation or restitution.

73. (1) A Judge or special magistrate of the Court or an adult court may, subject to this section, on the application of the prosecutor made at the hearing, order a child against whom any charge for an offence before the court has been proved 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.

(2) The court shall not make an order under this section unless it is of the opinion that the making of such an order would contribute to the rehabilitation of the child.

(3) The amount that the court may order any child to pay under this section shall not exceed two thousand dollars.

(4) Before making an order under this section, the court shall satisfy itself as to the amount of the loss or damage occasioned by the offence.

(5) If the court 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.

(6) Subject to subsection (3) of this section, an order under this section may direct the child to pay, within the period of six months after the order is made, such sum as the court thinks reasonable, either as one payment or by instalments, and in determining the amount of the order, the court shall have regard to the means of the child and his own ability to pay the amount ordered.

(7) Where the court has made an order for the payment of any money under this section, the child shall pay that money to the clerk of the court for transmission to the person in whose favour the order was made.

(8) Any amount in arrears under an order made pursuant to this section may be recovered by the person in whose favour the order was made, as a debt in a court of competent jurisdiction.

(9) 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, in total a greater amount than the amount of the damage or loss suffered by him.

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

(11) The court may not make any order against a child for compensation or restitution except pursuant to this section or the Criminal Injuries Compensation Act, 1978-1979.

74. Where a child is proceeded against or dealt with under this Part for an alleged offence, any person who intends to commence proceedings for loss or damage arising out of the commission of that alleged offence may at any time, upon application in writing to the Commissioner of Police, be furnished with the name and address of that child.

Name and address of child to be given in certain circumstances.

75. The Offenders Probation Act, 1913-1971, does not apply to, or in relation to, a child (except where a child is, pursuant to section 56 of this Act, dealt with as an adult by an adult court).

Application of Offenders Probation Act.

PART V**PART V****APPEALS AND RECONSIDERATION OF SENTENCE**

Appeals from orders, etc., under Part III of this Act, and other Acts.

76. (1) An appeal shall lie to the Supreme Court from any final order, declaration or adjudication made by the Children's Court—

(a) under Part III of this Act;

or

(b) under any other Act.

(2) An appeal under this section—

(a) must be made in accordance with the rules of court under this Act; and

(b) shall be heard by a single Judge of the Supreme Court.

Appeals from order, etc., under Part IV.

77. An appeal to the Supreme Court from any final conviction, order or adjudication of the Children's Court made in proceedings under Part IV of this Act shall be heard—

(a) in respect of a group I or group II offence, by the Full Court of the Supreme Court;

and

(b) in any other case, by a single Judge of the Supreme Court.

Single Judge may refer appeal to Full Court.

78. Nothing in this Division derogates from the power of a Judge of the Supreme Court to refer an appeal to be heard by the Full Court of the Supreme Court.

Powers of Supreme Court on appeal.

79. The Supreme Court when hearing an appeal from the Children's Court may exercise the same powers and make any order or adjudication in relation to a child that could lawfully have been made by the Children's Court acting under the powers conferred on it by this Act.

Reconsideration of sentence by Children's Court.

80. (1) Subject to this section, where a finding is made by the Children's Court that a charge against a child is proved, and an order is made against or in relation to the child in consequence of that finding, the Court may, upon an application made under subsection (2) of this section, reconsider the order and may—

(a) confirm the order;

or

(b) discharge the order and substitute therefor any other order the Court could have made in relation to the offence.

(2) Subject to this section, an application for reconsideration of an order may be made, in accordance with the rules of court under this Act—

(a) by the child, within one month after the date of the order;

or

(b) by the Minister, on behalf of the child, at any time after the date of the order.

(3) Where an application has been made under this section for reconsideration of a sentence of detention, the Court may, upon application by or on behalf of the child, release the child from detention upon bail upon such conditions as the Court thinks fit.

(4) The Court shall notify the applicant and all other parties concerned with the application of the place, date and time for the hearing of the application.

(5) Subject to subsection (7) of this section, where an appeal to the Supreme Court is instituted in respect of the original order, no application under this section may thereafter be made by the child.

(6) Subject to subsection (7) of this section, where an application for reconsideration is made under subsection (1) of this section, no appeal shall lie to the Supreme Court against the order in respect of which reconsideration is sought.

(7) Where an application under this section, or a notice of appeal to the Supreme Court, is withdrawn, all other parties concerned shall be notified accordingly, and thereupon an appeal shall lie to the Supreme Court, or an application may be made under this section, as the case may require, in all respects as if the date of that withdrawal were the date upon which the original order was made.

(8) An appeal shall lie to the Supreme Court from any order made by the Children's Court under this section.

PART VI

PART VI

THE CHILDREN'S COURT ADVISORY COMMITTEE

81. (1) There shall be a committee entitled the "Children's Court Advisory Committee".

Establishment
of the
Children's
Court
Advisory
Committee.

(2) The Advisory Committee shall consist of three members appointed by the Governor, of whom—

(a) one (the Chairman) shall be a Judge of the Supreme Court or a person holding judicial office under the Local and District Criminal Courts Act, 1926-1976;

(b) one shall be a person who, in the opinion of the Attorney-General, has wide knowledge or experience in the field of law enforcement, and who is nominated by the Attorney-General;

and

(c) one shall be a person who, in the opinion of the Minister, has a wide knowledge of and experience in the field of community welfare, and who is nominated by the Minister.

(2) A member of the Advisory Committee shall hold office for such term, and upon such conditions, as the Governor determines and specifies in the instrument of his appointment.

(3) Upon the expiration of the term of office of a member of the Advisory Committee, he shall be eligible for re-appointment.

82. A member of the Advisory Committee shall be entitled to receive such allowances and expenses as the Governor may from time to time determine.

Allowances and
expenses.

PART VI

Removal
from and
vacancies
of office.

83. (1) The Governor may remove a member of the Advisory Committee from office on the grounds of—

- (a) mental or physical incapacity;
- (b) dishonourable conduct;
- or
- (c) neglect of duty.

(2) The office of a member of the Advisory Committee shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by notice in writing given to the Attorney-General;
- or
- (d) he is removed from office by the Governor pursuant to subsection (1) of this section.

(3) Upon the office of a member of the Advisory Committee becoming vacant, a person shall be appointed to that office in accordance with this Act.

(4) Where the office of a member of the Advisory Committee becomes vacant before the expiration of the term of office for which he was appointed, the person appointed in his place shall be so appointed only for the balance of that term.

Functions
of the
Advisory
Committee.

84. (1) The functions of the Advisory Committee are to—

- (a) monitor and evaluate the administration and operation of this Act;
- (b) cause such data and statistics in relation to proceedings before the Children's Court to be collected as it thinks fit, or as the Attorney-General may direct;
- (c) perform any other functions prescribed by this Act;
- and
- (d) perform such other functions as the Governor may, by proclamation, assign to the Advisory Committee.

(2) The Advisory Committee shall have full power to perform any act necessary or expedient for the performance of the functions for which the Advisory Committee is established.

Reports.

85. (1) The Advisory Committee shall, not later than the thirty-first day of October in each year, report to the Attorney-General on the administration and operation of this Act during the previous financial year.

(2) The Advisory Committee shall investigate and report to the Attorney-General on any matter pertaining to this Act that has been referred to the Advisory Committee by the Attorney-General for investigation and report.

(3) The Attorney-General shall cause a copy of every report submitted to him under subsection (1) of this section to be laid before each House of Parliament as soon as practicable after his receipt thereof.

PART VII

PART VII

MISCELLANEOUS

86. (1) The Children's Court, an adult court or a children's aid panel shall, in determining the age of a person for the purpose of any proceedings under this Act, act on the best evidence or information that is reasonably available but, in the absence of any such evidence or information, the court or panel may itself estimate the age of the person.

Determination
of a person's
age.

(2) Where, in any proceedings before a court, it becomes apparent to the court that the person the subject of those proceedings should, by reason of his age, be dealt with in some other court, the court may remand that person to appear in the appropriate court.

(3) Nothing done by a court or a children's aid panel in respect of any person shall be invalid by reason of the fact that the court or panel acted upon a mistaken belief that the person was of a certain age.

87. (1) If it appears to the member, or members, of the Children's Court exercising the jurisdiction of the Court in any proceedings that those proceedings could be more conveniently, economically or fairly heard and determined by some other member, or members, of the Court, he may forthwith refer the matter to the Senior Judge who shall give such directions as to the hearing and determination of the proceedings as he thinks fit.

Change of
venue.

(2) The parties to the proceedings shall be notified of any change made to the place, date or time for the hearing of the proceedings pursuant to this section.

88. (1) In any proceedings before the Children's Court, or before an adult court pursuant to this Act, a copy of every report received by the court shall be furnished to the child the subject of the proceedings, to any guardian who is a party to the proceedings or is present in court and, where the proceedings are under Part IV of this Act, to the prosecutor, and any of those persons, or counsel for any of those persons, shall be permitted by the court to cross-examine the person, or any of the persons, by whom the report was made, or who carried out any investigation on which the report was based.

Certain reports
must be made
available to
child.

(2) Notwithstanding subsection (1) of this section, if the court is of the opinion that a report contains material that, if disclosed, may be prejudicial to the welfare of the child, the court may order that the whole, or any part, of the report shall not be furnished in accordance with subsection (1) of this section.

89. In any proceedings under this Act before the Children's Court or an adult court, any officer of the Department may appear before the court for the purposes of—

Right of
audience of
officers of the
Department.

(a) conducting any proceedings under Part III of this Act;

or

(b) in any proceedings under Part IV of this Act, tendering any report or making submissions in relation to the sentencing of a child.

PART VII

Legal representation of children.

90. Where, in any proceedings before the Children's Court, or before an adult court pursuant to this Act, the court is of the opinion that the child the subject of the proceedings needs legal representation and that such representation has not been arranged by or on behalf of the child, the court may, by order, make such provision for the legal representation of the child as it thinks fit.

Court must explain proceedings to a child, etc.

91. (1) In any proceedings before the Children's Court, or before an adult court pursuant to this Act, the court shall satisfy itself that the child the subject of the proceedings understands the nature of those proceedings.

(2) Where a child by, or in respect of whom, proceedings have been brought before the Children's Court, or before an adult court pursuant to this Act, is not represented by counsel or solicitor, the court—

(a) shall explain to the child in simple language the nature of the allegations against, or concerning, him and the legal implications of those allegations;

and

(b) shall, where the child has been charged with an offence, explain to him in simple language the elements of the offence that must be established by the prosecution.

(3) No order or adjudication of a court is defective on the ground of failure to comply with this section where the court has substantially complied with the provisions of this section.

(4) Where a child has been charged with an offence, he shall be furnished, as soon as reasonably practicable after being so charged, with a written statement in the prescribed form of his rights in respect of legal representation, and of the manner in which he may obtain legal advice, representation or assistance.

Persons who may be in court.

92. (1) Subject to subsection (2) of this section, no person shall be present at any sitting of the Children's Court, or at any sitting of an adult court dealing with a child under this Act, except for the following persons:—

(a) members and officers of the court;

(b) officers of the Department;

(c) parties to the case before the court, and the legal practitioners representing those parties;

(d) the prosecutor;

(e) witnesses whilst giving evidence and whilst permitted by the court to remain in court;

(f) any guardian of the child;

(g) any member of the Children's Court Advisory Committee;

(h) such other persons as the court specially authorizes to be present.

(2) Any person who is a *bona fide* representative of the news media may be present at a sitting of a court when the court is dealing with a child under Part IV of this Act.

(3) Nothing in this section abrogates the power of a court to exclude any person from a sitting of the court.

Restriction on reports of proceedings in respect of children.

93. (1) Subject to this section, a person shall not publish, whether by radio, television or newspaper or otherwise, a report of any proceedings before the Children's Court, or before an adult court pursuant to this Act.

(2) Unless otherwise ordered by the court, the result of any proceedings under Part IV of this Act may be published in accordance with this section and, for that purpose, the court shall, at the request of a person desiring so to publish the result of any proceedings, make that result available to him.

(3) Where, in any proceedings under Part IV of this Act, the child is convicted of an offence, a brief summary of the circumstances of the offence may be published together with any publication of the result of the proceedings, unless the court orders otherwise.

(4) Unless permitted by virtue of an order under subsection (5) of this section, a person shall not, in publishing the result of any proceedings referred to in subsection (2) of this section, or any summary under subsection (3) of this section, reveal the name, address or school, or include any particulars or publish any picture or film calculated to lead to the identification, of any child who is concerned in those proceedings, whether as a person against whom or in respect of whom those proceedings were taken, or as a witness in those proceedings.

(5) The court may, by order, dispense with the requirements of subsection (4) of this section to such extent and subject to such conditions as may be specified in the order.

(6) A person who acts in contravention of this section, or fails to comply with any order of a court under this section, shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

94. Any officer of the Department authorized by the Director-General for the purpose may have the lawful custody of a child against whom or in relation to whom any proceedings under this Act have been, or are about to be, brought, while that child is being conveyed to or from a court, or while the child is within the precincts of the court, and may, at any time, search the child and remove any object that he considers may be injurious to any person or property.

Detention and search by officers of Department.

95. A person who hinders an officer of the Department in the exercise of his powers under this Act shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Hindering an officer of the Department.

96. (1) The Minister may, from time to time, by instrument in writing, delegate to the Director-General such of his powers, duties, responsibilities and functions under this Act as the Minister thinks fit.

Delegation etc.

(2) The Director-General may delegate to any officer of the Department any of the powers, duties, responsibilities and functions vested in, or delegated to, the Director-General under this Act.

(3) A delegation under this section shall be revocable at will, and shall not prevent the exercise or performance of any power, duty, responsibility or function by the Minister or Director-General.

(4) In any proceedings under this Act, a certificate purporting to be signed by the Minister or the Director-General and stating that the person named therein is an officer of the Department and is authorized by the Minister, or the Director-General, as the case may be, to conduct any proceedings under this Act on his behalf, shall be sufficient proof of the facts so stated.

PART VII

Issue of
warrant.

97. No person shall issue an order for the removal of a child from any place, or a warrant for the apprehension of a child, unless that person is satisfied that the allegations made in respect of the child by the person seeking the order or warrant have been substantiated on oath.

Detention for
contempt or
enforcement of
order for
payment of
money.

98. (1) In any proceedings against a child before any court for—

(a) contempt of court;

or

(b) enforcement of any order for the payment of money,

the court is not empowered to sentence that child to imprisonment but may, by order, sentence the child to detention in a place (other than a prison) approved by the Minister.

(2) A child against whom an order for the payment of money has been made may, at any time prior to the execution of any mandate for his detention in relation to that order, apply to the Children's Court in the prescribed manner for further time in which to satisfy the order.

Mandates.

99. (1) Where a court makes an order that a child be detained in a training centre or other place the court shall issue a mandate for the taking of the child to that training centre or place, and for his detention for the duration of that order.

(2) A mandate issued by a court pursuant to subsection (1) of this section shall be a sufficient warrant for the taking and detention of the child in accordance with its terms.

Transfer of
children in
detention to
other training
centre or
prison.

100. (1) Where a child has been detained in, or remanded to, a training centre or any other place pursuant to an order of a court, the Director-General may in such circumstances as he thinks fit, with the approval of the Training Centre Review Board, direct that the child be removed and placed in some other training centre or, where the child has been remanded to, or is being detained in, a place other than a training centre, that he be removed and placed in a training centre or any other place (other than a prison) approved by the Minister.

(2) Where, upon application made to a Judge of the Children's Court by the Director-General, the Court is satisfied that a child who—

(a) is of or above the age of sixteen years;

and

(b) has been remanded to, or is being detained in, a training centre or any other place pursuant to an order of a court,

cannot be properly controlled in that training centre or other place, has within the period of fourteen days preceding the date of the application been found guilty of assaulting any person employed, or detained, in that training centre or other place, or has persistently incited others in the training centre or other place to cause a disturbance, the Court may, by order, direct that the child be held in custody in a prison for the remainder of the period of his detention.

(3) Where an application has been made under subsection (2) of this section and the Court is satisfied that the child is likely to be a danger to others, the Court may order that he be held in custody in a prison until the court has determined the application.

(4) The Court may, on the application of the Director-General, the child or a guardian of the child, revoke an order made under subsection (2) of this section.

(5) Where a child is held in custody in a prison pursuant to an order under this section, the Prisons Act, 1936-1976, shall apply to and in relation to that child.

101. Notwithstanding any Act or law to the contrary, a power or function vested in, or assigned to, the Attorney-General by or under this Act—

(a) shall not, by executive act, be vested in, or assigned to, any other Minister;

and

(b) shall not be delegated to any other Minister.

Attorney-General's powers and functions may not be delegated, etc., to any other Minister.

102. Proceedings in respect of offences against this Act shall be disposed of summarily.

Summary proceedings for offences against Act.

103. (1) The Senior Judge of the Children's Court may make rules in respect of the practice and procedure of the Court.

Rules of Court.

(2) The rules may provide that provisions of any rules or regulations made under any Act shall apply with such modifications as may be specified in the rules.

104. (1) The Governor may make such regulations as he considers may be necessary or expedient for the purpose of giving effect to the objects and provisions of this Act.

Regulations.

(2) Without limiting the generality of subsection (1) of this section, the Governor may make regulations—

(a) prescribing the practice and procedure of screening panels;

(b) prescribing the practice and procedure of children's aid panels;

(c) prescribing the practice and procedure of the Training Centre Review Board;

(d) prescribing the forms to be used under this Act;

(e) prescribing the procedures to be observed in relation to the detention of a child prior to being dealt with by a court, or while a child is being conveyed to or from any court, or while a child is in attendance at any court;

and

(f) prescribing penalties, not exceeding one hundred dollars in each case, for breaches of the regulations.

SCHEDULE

First Column Act Amended	Second Column How Amended	Third Column New Citation
Criminal Injuries Compensation Act, 1978	<p>Section 7 (4)— Strike out the word "means".</p> <p>Strike out paragraph (a) and insert paragraph as follows:—</p> <p>(a) subject to paragraphs (b) and (ba) of this subsection, means the court before which the offender was brought to trial;</p> <p>Insert in paragraph (b) after the passage "justices of the peace," the word "means".</p> <p>Insert after paragraph (b) the following paragraph:—</p> <p>(ba) where the offender was brought to trial before a special justice or two justices of the peace of the Children's Court, means the Children's Court constituted of a Judge or a special magistrate;</p> <p>Strike out paragraph (c) and insert paragraph as follows:—</p> <p>(c) where the offender has been dealt with by a children's aid panel, means the Children's Court constituted of a Judge or special magistrate;</p> <p>Strike out from subparagraph (i) of paragraph (d) the passage "a juvenile court" and insert "means the Children's Court constituted of a Judge or special magistrate".</p> <p>Insert in subparagraph (ii) of paragraph (d) after the passage "in any other case," the word "means".</p>	Criminal Injuries Compensation Act, 1978-1979
Education Act, 1972-1976	<p>Repeal section 79 and insert new section as follows:—</p> <p>Truants. 79. (1) A child of compulsory school age who habitually or frequently absents himself, without lawful excuse, from school when the school is open for instruction shall be guilty of an offence of truancy and liable to be dealt with under the Children's Protection and Young Offenders Act, 1979.</p> <p>(2) In this section—"lawful excuse" means any cause prescribed as a lawful excuse by regulation.</p>	Education Act, 1972-1979
Guardianship of Infants Act, 1940-1975	<p>Section 3— Strike out the definition of "the court" and insert definition as follows:—</p> <p>"the court" means the Children's Court of South Australia constituted of a Judge.</p> <p>Repeal section 22.</p>	Guardianship of Infants Act, 1940-1979

SCHEDULE—*continued*

First Column Act Amended	Second Column How Amended	Third Column New Citation
Justices Act, 1921-1977	Section 57a— Strike out subsection (10) and insert subsection as follows:— (10) This section shall not apply in relation to a defendant who is a child within the meaning of the Children's Protection and Young Offenders Act, 1979, except where the defendant— (a) is of or above the age of sixteen years; and (b) is charged with an offence under the Road Traffic Act, 1961-1979.	Justices Act, 1921-1979

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor