

# LEGISLATIVE COUNCIL

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Read 1° 8 April 1986

*(Brought in by the Honourable J. H. Kennan)*

## A BILL

to amend the *Children's Court Act* 1973 and the *Community Welfare Services Act* 1970 and for other purposes.

## Children's Court (Amendment) Act 1986

The Parliament of Victoria enacts as follows:

### **Purpose.**

1. The purposes of this Act are to—

- 5       (a) ensure that only magistrates may sit in a children's court; and
- (b) establish a Family division and a Criminal division within each children's court; and
- (c) make the hearings of a children's court open to the public but empower the court to close any particular hearing; and
- 10       (d) provide for appeals from the Family division to the Administrative Appeals Tribunal; and
- (e) strengthen the power of a children's court to deal with contempt of court.

### **Commencement.**

- 15       2. This Act comes into operation on a day or days to be proclaimed.

4—[204]—750/9.4.1986—2204/86—(Revision No. 4) (922)

No 8477.  
Reprinted to No  
9544  
Subsequently  
amended by Nos  
9879, 9902,  
9992, 10080,  
10084 and  
10260.

**Principal Act.**

3. In this Act, the *Children’s Court Act* 1973 is called the Principal Act.

**Children’s courts to be constituted by magistrates.**

4. (1) For sections 5 and 6 of the Principal Act, substitute— 5

**Appointment of magistrates for children’s courts.**

“5. (1) The Governor in Council may appoint any magistrate appointed under the *Magistrates’ Courts Act* 1971 to be a magistrate for any children’s court or children’s courts to which he or she is assigned by the Chief Magistrate under that Act, whether exclusively or in addition to any other duties. 10

(2) In assigning a magistrate to any children’s court or children’s courts, the Chief Magistrate must have regard to the experience of the magistrate in matters relating to child welfare.

(3) The Governor in Council may at any time revoke the appointment of a magistrate as a magistrate for any children’s court or children’s courts. 15

(4) A person who is a magistrate appointed under the *Magistrates’ Courts Act* 1971 is, on account of being a magistrate and without any further appointment, a magistrate for children’s courts in any place in which he or she acts as a magistrate and which is appointed under the *Magistrates’ Courts Act* 1971 as a place for the holding of a Magistrates’ Courts. 20

(5) A magistrate appointed under the *Magistrates’ Courts Act* 1971 cannot act as a magistrate for a children’s court if he or she has ceased to hold office as a magistrate or is suspended from that office. 25

(6) On the commencement of section 4 (1) of the *Children’s Court (Amendment) Act* 1986 a person who, immediately before that commencement, held office as a children’s court magistrate or a stipendiary children’s court magistrate shall go out of office. 30

(7) Nothing in sub-section (6) prevents a person who goes out of office by virtue of that sub-section from being a magistrate for a children’s court by virtue of sub-section (4).”.

(2) The Principal Act is amended as follows:

(a) In section 1, omit all words and expressions after “Government Gazette”; 35

(b) In section 3 (1), for the definition of “Magistrate” substitute—

“**Magistrate**” means a magistrate for a children’s court under this Act.

5       “**Officer**”, in relation to a children’s court, includes a counsellor appointed under section 14B.”;

(c) In section 17 (2) for “the children’s court magistrates, stipendiary magistrates, and justices constituting children’s courts” substitute “magistrates for children’s courts”;

10       (d) In section 22—

(i) in the proviso to sub-section (4) omit “stipendiary or children’s court”;

(ii) in sub-section (8) omit “stipendiary or children’s court”;

15       (e) In section 24 (1) omit “children’s court magistrate or by a stipendiary”;

(f) In section 35 (1) omit “or if the court is constituted by more than one magistrate, by any one of them.”;

(g) In sections 36 (3) and 37 (1) omit “or one of the magistrates”;

20       (h) In section 39 (7) omit “justice or a stipendiary or children’s court”;

(i) In section 43—

(i) in sub-section (3) for “one or more of the children’s court magistrates or justices” substitute “the magistrate”;

25       (ii) in sub-section (4) (a) omit “stipendiary magistrate or children’s court”;

(iii) in sub-section (4) (b) omit “stipendiary magistrate or by a children’s court”.

#### **Divisions of children’s courts.**

30       5. (1) After section 4 of the Principal Act, insert—

#### **Divisions of children’s courts.**

“4A. (1) Every children’s court consists of the following divisions:

(a) The Family division;

(b) The Criminal division.

35       (2) The Family division has all of the jurisdiction of the children’s court, except the jurisdiction referred to in paragraphs (a), (b) and (c) of section 14 (1).

(3) The Criminal division has the jurisdiction referred to in paragraphs (a), (b) and (c) of section 14 (1).

(4) Subject to sub-section (5), a division of a children's court may sit at the time and place appointed under section 4 or, with the consent of the parties, at any other time or place.

(5) The Family division and the Criminal division of a children's court must not sit at the same time and place unless, in the case of proceedings relating to a particular child, the court otherwise orders. 5

(6) Each division of a children's court is constituted by a magistrate sitting alone and may for all purposes be taken to be a children's court.

(7) Each division of a children's court has such of the powers of a children's court as are necessary to enable it to exercise its jurisdiction. 10

(8) The Family division and Criminal division may sit in sub-divisions each of which may be constituted as, and has the powers of, the division."

**Family division to have regard to certain matters.**

"4B. (1) In proceedings in the Family division, the court, as far as practicable— 15

(a) must have regard to the need to give the widest possible protection and assistance to the family as the fundamental group unit of society, particularly while it is responsible for the care and education of children; 20

(b) must protect the rights of the child;

(c) must ensure that the welfare and interests of the child are the paramount considerations;

(d) must respect the cultural identity and needs of the child, the child's parents and other members of the child's family; 25

(e) must resolve matters as soon as practicable;

(f) must allow the child, the parents and other interested parties to participate fully in the proceedings;

(g) must ensure that the proceedings are comprehensible to the child, the parents and other interested parties and that the child understands the nature and implications of the proceedings; 30

(h) must consider any wishes expressed by the child and give those wishes such weight as the court considers appropriate in the circumstances." 35

**Criminal division to have regard to certain matters.**

"4C. (1) In proceedings in the Criminal division, the court, as far as practicable—

(a) must satisfy itself that the child understands the nature and implications of the proceedings and any decision or ruling in the proceedings; 40

(b) must allow the child to participate fully in the proceedings;

(c) must consider any wishes expressed by the child.”.

(2) Section 4 (5) of the Principal Act is repealed.

(3) In section 14 (1) of the Principal Act—

(a) after “14 (1)” insert “Subject to section 4A,”; and

5 (b) after paragraph (d) insert—  
“ ; and

(e) to hear and determine all irreconcilable difference applications under section 34 or 104 of the *Community Welfare Services Act 1970*.”.

10 (4) After section 14 of the Principal Act, insert—

**Preliminary conferences.**

15 “14A. (1) A children’s court must order that proceedings relating to irreconcilable difference applications under section 34 or 104 of the *Community Welfare Services Act 1970* be considered at a preliminary conference.

(2) A children’s court, on its own motion or on the request of the court liaison officer appointed under section 13A or a party, may order that any other proceedings within the jurisdiction of the Family division be considered at a preliminary conference.

20 (3) The object of a preliminary conference is to facilitate the settlement of the proceedings by providing an informal forum in which the parties may discuss the subject-matter of the proceedings and, where possible, reach agreement.

25 (4) If a preliminary conference is required to be held in relation to any proceedings, the clerk of the children’s court must, subject to section 4A, fix a place and time for the conference to take place and must notify the parties to the proceedings of that place and time.

(5) A preliminary conference shall be conducted by—

30 (a) the clerk of the relevant children’s court; or  
(b) a counsellor appointed under section 14B.

(6) A person attending a preliminary conference may attend with counsel or a solicitor.

35 (7) Evidence of anything said or of any admission made at a preliminary conference is not admissible in any legal proceedings except in a court on the trial of a person for an offence committed at the conference.

(8) If a preliminary conference is held and—

(a) agreement is reached as to the terms of an order of the children’s court that would be acceptable; and

(b) the terms of the agreement are reduced to writing, signed by the parties and lodged with the children's court; and

(c) the children's court is satisfied that an order in those terms would be within the powers of the court and in the best interests of the child—

the children's court must make an order in accordance with those terms.”.

#### **Counsellors.**

“14B. (1) The Minister may from time to time by notice published in the *Government Gazette* appoint suitably qualified persons to be counsellors for children's courts.

(2) The function of a counsellor is to conduct preliminary conferences in the Family division of a children's court.

(3) A counsellor (other than a counsellor who is an officer or employee in the public service) is entitled to receive fees at the prescribed rate for conducting a preliminary conference.”.

(5) In section 56 of the Principal Act, after paragraph (b) insert—  
“(ba) preliminary conferences;”.

(6) After section 13 of the Principal Act, insert—

#### **Establishment of Children's Court Liaison Office.**

“13A. (1) A Children's Court Liaison Office is established.

(2) Subject to the *Public Service Act* 1974, there may be appointed to the Children's Court Liaison Office such number of court liaison officers and such other persons as are necessary for the proper functioning of the Office.

(3) A court liaison officer is a children's court officer for the purposes of this Act.

(4) The following are the functions of the Children's Court Liaison Office:

(a) To co-ordinate the convening of preliminary conferences and the reporting of the result of each preliminary conference to the appropriate children's court;

(b) To provide information and advice about children's courts to children, families and the community;

(c) To co-ordinate the provision to children's courts of such reports as are required;

(d) Generally, to provide advice and assistance to children's courts.”.

(7) For section 20 (2) of the Principal Act, substitute—

“(2) A children's court must—

- (a) conduct its proceedings in an informal manner;
- (b) proceed without regard to legal forms.

(3) The Family division of a children's court—

- (a) must consider evidence on the balance of probabilities; and
- 5 (b) may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary.”.

(8) After section 24 of the Principal Act, insert—

**Attorney-General may intervene before Family division.**

- 10 “24A. The Attorney-General may appear or be represented at any proceedings before the Family division of a children's court and may call and examine or cross-examine witnesses and make submissions.”.

- 15 (9) In section 25 (1) of the Principal Act for the expression commencing “appears before a children's court” and ending “seriously disrupted shall” substitute “where an application is made to the Family division of a children's court with respect to a child or young person, the court, if satisfied that the child has committed the offence or that an order should be made with respect to the child or young person, must”.

**Proceedings to be in open court.**

- 20 6. (1) For section 18 (1) of the Principal Act, substitute—

“(1) All proceedings in a children's court must be heard in open court.

- 25 (1A) A children's court may, if in the circumstances of the particular proceedings the court considers it desirable so to do, make one or more of the following orders:

- (a) An order that a specified person is not, or specified persons are not, to be present in court during the proceedings or during a specified part of the proceedings;
- 30 (b) An order that persons included in a specified class of persons are not to be present in court during the proceedings or during a specified part of the proceedings;
- (c) An order that only the parties to the proceedings, their legal representatives and such other persons (if any) as are specified by the court may be present in court during the proceedings or during a specified part of the proceedings.

(1B) A children's court may make an order under sub-section (1A)—

- (a) on the application of a party to the proceedings; or
- (b) on the application of any other interested person; or
- (c) without any application being made.

(1C) Any party to the proceedings and any other interested person has standing to support or oppose an application for an order under sub-section (1A).”.

(2) Section 54 of the Principal Act is repealed.

(3) Section 53 (1) (e) of the Principal Act and the word “or” immediately preceding it are repealed. 5

**Appeal to Administrative Appeals Tribunal in family matters.**

7. (1) After section 52 of the Principal Act, insert—

**Appeal to Administrative Appeals Tribunal in family matters.**

“52A. (1) An application may be made to the Administrative Appeals Tribunal for review of a decision made by the Family division of a children’s court. 10

(2) Section 31 of the *Administrative Appeals Tribunal Act* 1984 applies to an application under sub-section (1).

(3) If a child is adjudged to be a child in need of care and protection and admitted to the care of the Department, the relevant children’s court may, at the time of making the order admitting the child to the care of the Department or subsequently, if it considers that the welfare of the child requires such an order, order that the child shall not be released from the care of the Department pending the review or shall only be released to a specified person. 15 20

(4) The Administrative Appeals Tribunal has jurisdiction to review a decision of a children’s court with respect to a person even though since the date of the decision the person has, on account of age, ceased to be a child within the meaning of this Act. 25

(5) This section applies only to decisions made by a children’s court after the commencement of section 7 (1) of the *Children’s Court (Amendment) Act* 1986.”.

(2) Section 52 of the Principal Act is amended as follows:

(a) For sub-section (1) substitute— 30

“(1) A person against or in respect of whom a conviction or order is made by the Criminal division of a children’s court may appeal under Part IX of the *Magistrates’ Courts Act* 1971 against the conviction or order.”;

(b) Sub-sections (4) and (5) are repealed. 35

(3) Section 53 (1) of the Principal Act is amended as follows:

(a) Omit “or order”;

(b) In paragraph (a) omit “or for the child in respect of whom the order was made”.



**Contempt.**

8. Section 18 of the Principal Act is amended as follows:

(a) After sub-section (2) insert—

“(2A) Any person aged seventeen or more shall be taken to be guilty of contempt of court if that person—

(a) wilfully insults, threatens, interferes with or obstructs any magistrate or officer of a children's court in the court or in the vicinity of the court; or

(b) wilfully insults, threatens, interferes with or obstructs any magistrate who is going to or returning from a children's court; or

(c) wrongfully influences or attempts to influence any magistrate or officer of a children's court or any witness or any person concerned in any way with proceedings of the court; or

(d) is present in court in contravention of an order made under section 18 (1)—

and the court may by order, whether or not in writing, direct that person to be removed from the court and to be taken into custody and at any time before the rising of the court may impose on that person a penalty of not more than 5 penalty units and, in default of immediate payment of that penalty or without imposing any penalty, may order that that person be imprisoned for a term of not more than one month.”;

(b) In sub-section (3)—

(i) after “sub-section (2)” insert “or (2A)”;

(ii) for “1 penalty unit” substitute “5 penalty units”;

(iii) for “48 hours” substitute “one month”.

30 **Amendment of *Community Welfare Services Act 1970*.**

9. In section 35 (6) of the *Community Welfare Services Act 1970*, paragraph (c) is repealed.

No. 8089.  
Reprinted to No.  
10152.  
Subsequently  
amended by Nos.  
10257, 10260,  
10262.

