



ANNO VICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1980

No. 50 of 1980**An Act to amend the Children's Protection and Young Offenders Act, 1979.***[Assented to 3rd July, 1980]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Children's Protection and Young Offenders Act Amendment Act, 1980".

(2) The Children's Protection and Young Offenders Act, 1979, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Children's Protection and Young Offenders Act, 1979-1980".

Commencement.

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

**Amendment of principal Act, s. 4—
Interpretation.**

3. Section 4 of the principal Act is amended by inserting after the definition of "parent" the following definition:—

"prison" means a prison administered under the Prisons Act, 1936-1975, and any police prison, police station, watch-house or lock-up:.

**Amendment of principal Act, s. 9—
Jurisdiction of Children's Court.**

4. Section 9 of the principal Act is amended by striking out paragraph (b) from subsection (3).

**Amendment of principal Act, s. 42—
Apprehension.**

5. Section 42 of the principal Act is amended by inserting after subsection (4) the following subsection:—

(5) Notwithstanding subsection (4) of this section, where a child is apprehended outside the prescribed area and it is not reasonably practicable to detain him in the manner provided by subsection (4) of this section, he may be detained—

(a) in a police prison;

or

(b) in a police station, watch-house or lock-up approved by the Minister.

6. Section 44 of the principal Act is amended by inserting after subsection (3) the following subsections:—

Amendment of
principal Act,
s. 44—
Remand
proceedings.

(4) Where a child has been committed to an adult court for trial, the adult court shall, if at any time it remands the child in custody, order that he be detained in a place (other than a prison) approved by the Minister.

7. Section 50 of the principal Act is amended—

Amendment of
principal Act,
s. 50—
Provisions
relating to
verdict of
Court.

(a) by striking out from subsection (2) the passage “not later than five o'clock in the afternoon of the fifth working day after the day on which” and inserting in lieu thereof the passage “as expeditiously as is reasonably practicable after”;

and

(b) by striking out subsections (3) and (4).

8. Section 51 of the principal Act is amended—

Amendment of
principal Act,
s. 51—
Powers of
Court on
finding
child guilty.

(aa) by inserting in paragraph (d) of subsection (1) before the word “without” the passage “upon convicting the child, or,”;

(a) by inserting in subsection (12) after the word “judgment” the passage “, or unless the Court is of the opinion that a group I or group II offence should be taken into account in fixing sentence for any other offence in accordance with subsection (13) of this section, and that a conviction should not be recorded in respect of the offence taken into account”;

and

(b) by inserting after subsection (12) the following subsection:—

(13) Where the Court finds charges of a number of offences proved against a child, and the Court proposes to sentence the child in respect of one or more, but not all, of those offences, the Court may, in fixing sentence, take into account the offences in respect of which the child is to be discharged without penalty.

9. Section 54 of the principal Act is amended by inserting after subsection (6) the following subsection:—

Amendment of
principal Act,
s. 54—
How
jurisdiction
under this
Part is to be
exercised.

(7) Nothing in this section prevents any member of the Court, upon imposing a fine or making any other order for the payment of money, from making an order for detention in default of payment, in accordance with the provisions of the Justices Act, 1921-1979.

10. Section 65 of the principal Act is amended by inserting after subsection (2) the following subsection:—

Amendment of
principal Act,
s. 65—
Absolute
release from
detention by
Court.

(3) The Court may, for the purposes of determining an application under this section, hear, or receive submissions from, any person it thinks fit.

Amendment of
principal Act,
s. 89—
Right of
audience of
officers of the
Department.

11. Section 89 of the principal Act is amended by striking out paragraph (b) and the word "or" preceding that paragraph and inserting in lieu thereof the following paragraphs:—

(b) tendering any report or making submissions in relation to the manner in which a child is to be dealt with pending or during his trial, or while awaiting sentence;

or

(c) tendering any report or making submissions in relation to the sentencing of a child.

Repeal of
s. 98 of
principal Act
and enactment
of section
in its place.

12. Section 98 of the principal Act is repealed and the following section is enacted and inserted in its place:—

98. (1) Notwithstanding any Act or law to the contrary, no order for imprisonment may be made against a child for—

(a) contempt of court;

or

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

but, where, but for this section, an order for imprisonment could be made under any Act or law in respect of any matter referred to under paragraph (a) or (b) of this section—

(c) an order may be made for the detention of the child in a place (other than a prison) approved by the Minister;
and

(d) the provisions of that Act or law shall apply *mutatis mutandis* to, and in relation to, the order for detention.

(2) For the purposes of this section, but without limiting the generality of paragraph (d) of subsection (1) of this section, a reference in any Act to imprisonment shall be read as a reference to detention, and a reference in any Act to a warrant or writ by virtue of which a person may be committed to prison shall be read as a reference to a mandate for detention.

Amendment of
principal Act,
s. 99—
Mandates.

13. Section 99 of the principal Act is amended—

(a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Where an order has been made for the detention of a child in a training centre or other place, a mandate in the prescribed form shall be issued for apprehending the child and taking him to that training centre or place, and for his detention for the duration of that order.;

(b) by striking out from subsection (2) the passage "by a court";

and

(c) by inserting in subsection (2) after the passage "warrant for the" the passage "apprehension,".

14. The following section is enacted and inserted in the principal Act after section 99 thereof:—

Enactment of
s. 99a of
principal Act.

99a. (1) Subject to subsection (2) of this section, where a mandate for the detention of a child has been issued for the purpose of enforcing a fine or other order for the payment of money made in proceedings (not being civil proceedings) against the child, the Director-General may, with the consent of the child, direct that the child serve the period of detention on a periodic, non-residential basis.

Periodic
detention on
default in
payment of
fine, etc.

(2) The court, upon imposing a fine or making any other order for the payment of money in any such proceedings against a child, may order that the Director-General refrain from exercising the powers conferred upon him under subsection (1) of this section in any proceedings for the enforcement of that fine or order.

(3) Where the Director-General directs that a child serve his period of detention on a periodic, non-residential basis, the following provisions shall apply:—

- (a) the total number of hours of periodic detention to be served by the child shall be computed on the basis of eight hours, or such lesser number as may be prescribed, for each day of detention specified in the mandate;
- (b) the child shall not serve more than eight hours of periodic detention on any one day;
- (c) the child shall serve his detention on a periodic basis in accordance with the directions of the Director-General;
- (d) without limiting the generality of paragraph (c) of this subsection, the Director-General may require the child to participate in such work projects or programmes as the Director-General thinks appropriate whilst the child is in detention;
- (e) the mandate for the detention of the child shall not be executed whilst the child complies with the directions of the Director-General.

(4) Where a child has served at least two-thirds of the total number of hours of his periodic detention and has complied with all the directions of the Director-General, the Director-General may, if he thinks good reason exists for doing so, release the child from the obligation to serve such number of the remaining hours of periodic detention as he thinks fit.

(5) Where a mandate for the detention of a child is executed as a result of his failure to comply with the directions of the Director-General given under this section, the period of detention specified in the mandate shall be reduced by one day for each eight hours (or, if a lesser number of hours has been prescribed under subsection (3) of this section, that lesser number) of periodic detention served by the child.

15. Section 100 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “or any other place” first occurring;

Amendment of
principal Act,
s. 100—
Transfer of
children in
detention to
other training
centre or to
prison.

(b) by striking out from subsection (1) the passage “, with the approval of the Training Centre Review Board,”;

(c) by striking out from subsection (1) the passage “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”.

and

(d) by inserting after subsection (1) the following subsections:—

(1a) Where the Director-General makes a direction under subsection (1) of this section, he shall thereupon give notice in writing of the direction to the Training Centre Review Board.

(1b) The Training Centre Review Board shall conduct its review of any direction made by the Director-General under subsection (1) of this section—

(a) at the meeting of the Review Board next held after receiving notice of the direction;

or

(b) if the Chairman of the Review Board is of the opinion that the matter is urgent, at a meeting of the Review Board convened earlier by him for the purpose.

(1c) The Training Centre Review Board may—

(a) confirm, vary or revoke the direction of the Director-General;

and

(b) give any further or other direction that the Board thinks necessary or expedient.

(1d) The Director-General shall cause a decision of the Training Centre Review Board made under subsection (1c) of this section to be carried into effect.

Amendment of
schedule of
principal Act.

16. The schedule to the principal Act is amended by striking out so much of the schedule as relates to the Guardianship of Infants Act, 1940-1975.

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

K. D. SEAMAN, Governor