



ANNO TRICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1989

No. 31 of 1989

An Act to amend the Children's Protection and Young Offenders Act, 1979.

[Assented to 4 May 1989]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Children's Protection and Young Offenders Act Amendment Act, 1989*.

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

Commencement

2. (1) This Act (except for Schedule 1) will be taken to have come into operation on 1 January, 1989.

(2) Schedule 1 will come into operation on a day to be fixed by proclamation.

Interpretation

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

"pecuniary sum" means—

- (a) a fine;
 - (b) compensation;
 - (c) costs;
 - (d) a sum payable pursuant to a recognizance or a surety ancillary to a recognizance;
- or
- (e) any other amount payable pursuant to an order or direction of the Court under Part IV,

and includes a levy imposed under the *Criminal Injuries Compensation Act, 1978*:

"prescribed unit", in relation to a sum in default, means—

- (a) \$50;

or

(b) if some other amount is prescribed, that amount,
and includes any fraction left after dividing the sum in default by the relevant amount.

Breach of recognizance

4. Section 61 of the principal Act is amended by striking out subsection (7).

Insertion of s. 72a

5. The following section is inserted after section 72 of the principal Act:

Costs

72a. (1) The Children's Court may make such order for costs against a child found guilty of an offence as the Court thinks fit and may direct the manner and time in which the costs must be paid.

(2) A child who has been ordered to pay costs may apply to the appropriate clerk of the Children's Court for an order varying the time or manner of payment of the costs.

(3) Upon an application under subsection (2), the clerk may make such order as the clerk thinks appropriate.

Power of court to order compensation or restitution

6. Section 73 of the principal Act is amended by striking out subsection (8).

Repeal of s. 75

7. Section 75 of the principal Act is repealed.

Insertion of Part IVA

8. The following Part is inserted in the principal Act after Part IV:

PART IVA

ENFORCEMENT OF PECUNIARY SUMS AND OTHER ORDERS

DIVISION I—ENFORCEMENT OF PECUNIARY SUMS

Default in payment of instalments

75a. If the Children's Court has directed that a pecuniary sum be paid in instalments and default is made in payment of any such instalment, the whole of the balance of the pecuniary sum becomes due and payable on that default.

Detention in default of payment

75b. (1) For the purposes of enforcing an order of the Children's Court against a child or a surety for payment of a pecuniary sum, the Court may, at the time of making the order, sentence the person to a period of detention (or imprisonment in the case of a surety) to be served on default in payment of the sum.

(2) Where a child or a surety has been in default of payment of a pecuniary sum for more than one month, the Court—

(a) may, if a sentence of detention or imprisonment was not imposed pursuant to subsection (1), sentence the person to a period of detention (or imprisonment in the case of a surety) in respect of the amount outstanding under the order and issue a mandate or warrant for that period;

or

(b) may, if such a sentence was imposed pursuant to subsection (1), issue a mandate or warrant against the person for a period of detention or imprisonment in respect of the amount outstanding.

(3) A period of detention or imprisonment fixed under this section will be calculated at the rate of one day for each prescribed unit of the pecuniary sum or the balance outstanding (as the case may require) but must not in any case exceed three months.

(4) The Court may direct that a period of detention or imprisonment under this section be cumulative upon any other sentence, or sentences, of detention or imprisonment then being served, or to be served, by the person.

Warrant for sale of goods

75c. (1) Where a person has been in default of payment of a pecuniary sum for more than one month the Court may, if of the opinion that to do so would supply, or substantially reduce, the amount outstanding, order the sale of goods owned by the person, and issue a warrant authorizing the seizure and sale of those goods.

(2) The goods that may be seized pursuant to a warrant under this section are those that could be taken in bankruptcy proceedings.

(3) If the person in default or any other person alleges that any particular goods are not liable to seizure and sale under this section, the person executing the warrant must not proceed to sell those goods until the Court has, on the application of the appropriate clerk of the Court, determined the matter.

(4) For the purposes of determining an application under subsection (3), the Court may issue a summons requiring the attendance of such persons as the Court thinks fit to call before it.

(5) Where a person other than the person in default claims an interest in goods the subject of a warrant under this section, the Court may, if satisfied of the validity of the claim—

(a) exclude the goods from the warrant;

or

(b) direct the application of the proceeds of the sale in such manner as the Court considers just.

(6) The surplus proceeds from a sale pursuant to a warrant under this section must be returned to the person in default.

(7) Goods seized pursuant to a warrant but not sold must be returned to the person in default or left at the place from which they were taken.

(8) If the proceeds from the sale of goods pursuant to a warrant are insufficient to meet the amount in respect of which the warrant was issued (including any costs of issue and execution of the warrant), the Court may fix default detention (or imprisonment in the case of a surety) in respect of the balance outstanding.

Costs of process will be added

75d. The costs of issuing and executing a mandate or warrant under this Division will be added to the amount in respect of which it was issued.

Person in default may pay person executing the mandate or warrant

75e. (1) Where a person against whom a mandate or warrant has been issued under this Division pays to the person executing the mandate or warrant the amount in respect of which it was issued, together with the costs of issuing and executing it, the mandate or warrant is satisfied.

(2) A person to whom any money has been paid in accordance with subsection (1) must issue a receipt for the payment and forward the amount to the appropriate clerk of the Court.

Postponement or suspension of warrants

75f. (1) Where a person in default of payment of a pecuniary sum applies to a clerk of the Children's Court for relief under this section, the clerk may, subject to such conditions as to payment of the sum as the clerk thinks fit, postpone the issue of a mandate or warrant under this Part or suspend its operation (as the case may require).

(2) The conditions referred to in subsection (1) may include a condition requiring that specified security for payment be given.

(3) A postponement or suspension under this section may be revoked by a clerk of the Children's Court for breach of condition.

Remission of pecuniary sum

75g. (1) The Children's Court may, on the application of the person liable under an order for payment of a pecuniary sum, remit the outstanding amount under the order if the Court is satisfied that, in all the circumstances of the case, no other order under this Division would be appropriate.

(2) Upon the Court making an order under subsection (1), the liability of the person in default to comply with the order for payment of the sum is wholly extinguished.

***Ex parte* orders**

75h. (1) The Court may, in such circumstances as it thinks appropriate, make an order under this Division in the absence of the person to whom the order relates.

(2) Where an order is made in the absence of a person pursuant to subsection (1), a copy of the order must be served on the person personally.

(3) Where the order is for detention or sale of goods, no action for enforcement of the order may be taken until ten days after service of the order.

Amount in default is reduced by detention or imprisonment served

75i. (1) Where a person is committed to a training centre or prison pursuant to a mandate or warrant issued under this Division, the amount in respect of which the mandate or warrant was issued is reduced by one prescribed unit for each day served in a training centre or prison pursuant to the mandate or warrant.

(2) If the person at any time pays to the appropriate clerk of the Children's Court or the superintendent of the training centre or prison manager the amount then outstanding under the mandate or warrant, together with the costs of issuing and executing it, the sentence of detention or imprisonment is wholly extinguished.

(3) If the person at any time pays to the appropriate clerk of the Children's Court or the superintendent of the training centre or prison manager a part of the amount then outstanding under the mandate or warrant, the balance of the period of detention or imprisonment still to be served will be reduced by the proportion that the amount so paid bears to that outstanding amount (ignoring any fraction or any part of a day).

(4) A training centre superintendent or prison manager to whom any money has been paid must issue a receipt for the payment and forward the amount to the appropriate clerk of the Children's Court.

(5) Where a person has served a period of detention fixed under this Part, the whole of the amount in respect of which the mandate or warrant was issued is extinguished.

(6) For the purposes of this section, the deduction from a person's earnings or allowance while in a training centre or prison of the amount of a levy payable under the *Criminal Injuries Compensation Act, 1978*, will be taken to be payment by the person of that amount.

Periodic detention on default in payment of pecuniary sum

75j. (1) Subject to subsection (2), where a mandate for the detention of a child has been issued for the purpose of enforcing an order for payment of a pecuniary sum against the child, the Director-General may, with the consent of the child, direct that he or she serve the period of detention on a periodic, non-residential basis.

(2) The Court, upon making an order for payment of a pecuniary sum against a child, may order that the Director-General refrain from exercising the powers conferred by subsection (1) in any proceedings for the enforcement of that order.

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

- (a) the total number of hours of periodic detention to be served by the child will be computed on the basis of eight hours (or, if a lesser number is prescribed, that number) for each day of detention specified in the mandate;
- (b) the child must not serve more than eight hours of periodic detention on any one day;
- (c) the child must serve the detention on a periodic basis in accordance with the directions of the Director-General;
- (d) without limiting the generality of paragraph (c), 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 will 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 periodic detention and has complied with all the directions of the Director-General, the Director-General may, if of the opinion that good reason exists for doing so, release the child from the obligation to serve such number of the remaining hours of periodic detention as the Director-General thinks fit.

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

Civil liability cannot be diminished

75k. Notwithstanding any other provision of this Part, a person cannot diminish a civil liability by serving a period of detention or imprisonment pursuant to this Division.

DIVISION II—ENFORCEMENT OF NON-PECUNIARY ORDERS**Enforcement of non-pecuniary orders**

75l. Where a child fails to comply with a sentence of the Children's Court requiring the child to do some act (not being the payment of a pecuniary sum), the Court may, on application by a clerk of the Court—

- (a) sentence the child to such period of detention (not exceeding three months) as the Court thinks fit;
- (b) issue a mandate against the child;

and

- (c) if the Court thinks it appropriate to do so, direct that the period of detention be cumulative upon any other sentence, or sentences, of detention or imprisonment being served, or to be served, by the child.

Insertion of s. 97a

9. The following section is inserted after section 97 of the principal Act:

Detention of children in emergencies

97a. (1) Notwithstanding any other provision of this Act, if the Minister is of the opinion that an emergency has arisen (whether out of an industrial dispute or any other circumstance) by virtue of which it is impossible or impracticable to detain children in training centres or other approved places as provided by this Act, a child who is to be detained under this Act may be detained—

(a) in a police prison;

or

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

until the emergency is, in the opinion of the Minister, over.

(2) The person for the time being in charge of the place in which a child is being detained pursuant to this section must take such steps as are reasonably practicable to keep the child from coming into contact with any adult person being detained in the same place.

Repeal of s. 99a

10. Section 99a of the principal Act is repealed.

Special provisions relating to work projects or programmes

11. Section 99b of the principal Act is amended by striking out "section 99a" and substituting "section 75j".

SCHEDULE 1

The principal Act is further amended as follows:

Provision Amended	How Amended
Section 14 (7)	Strike out "Penalty: Imprisonment for three months" and substitute "Penalty: Division 8 imprisonment".
Section 16 (5)	Strike out "Penalty: Imprisonment for three months" and substitute "Penalty: Division 8 imprisonment".
Section 54 (7)	Strike out subsection (7) and substitute the following subsection: (7) Nothing in this section prevents any member of the Court, on making an order for payment of a pecuniary sum, from making an order for detention in default of payment.
Section 69 (3)	Strike out "therewith shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars" and substitute "with the order is guilty of an offence. Penalty: Division 9 fine".
Section 93 (6)	Strike out "shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars" and substitute "is guilty of an offence. Penalty: Division 5 fine".
Section 95	Strike out "shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars" and substitute "is guilty of an offence. Penalty: Division 10 fine".
Section 104 (2) (f)	Strike out this paragraph and substitute: (f) prescribing fines, not exceeding a division 11 fine in each case, for breaches of the regulations.
Sections 51, 54, 59, 60, 61 and 99b	Strike out "recognition" wherever occurring and substitute, in each case, "bond".

SCHEDULE 2

Transitional Provisions

1. Subject to clauses 2 and 3, Part IVA of the principal Act applies in relation to a child or surety who has defaulted in payment of a pecuniary sum, or a child who has failed to comply with a non-pecuniary order, whether the default or failure occurred before or after the commencement of that Part.

2. This Act does not affect a period of detention or imprisonment for the enforcement, or in default of payment, of a pecuniary sum, where the period of detention or imprisonment was fixed after 1 January, 1989, but before the day of assent to this Act.

3. This Act does not affect any proceedings taken under section 73 (8) of the principal Act for the recovery of arrears under an order for compensation or restitution, where those proceedings were commenced after 1 January, 1989 but before the day of assent to this Act.

4. A recognizance in force under the principal Act immediately before the commencement of the first schedule will, on that commencement, be taken to be a bond.

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

D. B. DUNSTAN, Governor