



ANNO TRICESIMO QUINTO

**ELIZABETHAE II REGINAE**

**A.D. 1986**

\*\*\*\*\*

**No. 34 of 1986**

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

*[Assented to 10 April 1986]*

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

Short title.

1. (1) This Act may be cited as the "Children's Protection and Young Offenders Act Amendment Act, 1986".

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

Commencement.

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

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of  
s. 4—  
Interpretation.

3. Section 4 of the principal Act is amended by striking out the definition of "homicide" and substituting the following definition:

"homicide" means—

(a) an offence against section 11, 12, 13, 16 or 17 of the Criminal Law Consolidation Act, 1935;

(b) an offence against section 270a of that Act of attempting to commit an offence referred to in paragraph (a);

or

(c) an offence against section 270ab of that Act.

Amendment of  
s. 12—  
Minister may  
apply for  
declaration that  
child is in need of  
care.

4. Section 12 of the principal Act is amended by inserting after paragraph (c) of subsection (1) the following paragraph:

(ca) a guardian of the child who has the immediate custody and control of the child is not a fit person to be a guardian of the child;

5. Section 44 of the principal Act is amended by striking out the passage "The Court may revoke any order made under subsection (1) of this section and" and substituting the passage "An order under subsection (1) may be revoked by the Court (whether constituted of the same judicial officer or officers or not) and the Court".

Amendment of  
s. 44—  
Powers of Court  
upon remand.

6. Section 51 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) Where the Court finds a charge against a child proved but does not convict the child, the Court may, if it considers that the circumstances constituting the offence with which the child was charged were of a trifling nature, order that, in any subsequent proceedings for an offence against the child before a court other than a court exercising jurisdiction under this Act, no reference be made to the charge against the child or the proceedings before the Court.;

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

(b) by striking out paragraph (b) of subsection (5) and substituting the following paragraph:

(b) shall, subject to subsection (5a), bind the child for such sum.;

(c) by inserting after subsection (5) the following subsection:

(5a) The sum for which a child who has been found guilty of a simple offence or a minor indictable offence may be bound under a recognizance under this section is limited—

(a) in the case of a child under the age of 15 years, to \$200;

and

(b) in the case of any other child, to \$500.;

and

(d) by striking out subsection (6) and substituting the following subsections:

(6) Where the Court has convicted and sentenced a child 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 the child will be of good behaviour and—

(a) upon any one or more of the conditions referred to in subsection (1) (b);

or

(b) upon—

(i) the condition that the child will participate in a work project or programme for a period determined in accordance with subsection (6b) and, during those hours, obey the directions of an officer of the Department or other person nominated by the Director-General;

and

(ii) any other condition that the Court may think necessary or desirable.

(6a) The Court shall not include in a recognizance a condition referred to in subsection (6) (b) (i) unless—

(a) the period of the suspended sentence of detention is 4 months or less;

and

(b) the Court has first obtained a report on the child from an assessment panel recommending that such a condition would be appropriate in the circumstances.

(6b) Where the Court includes in a recognizance a condition referred to in subsection (6) (b) (i), the following provisions apply:

(a) the period (in hours) of participation in the work project or programme shall be determined by multiplying the number of days of detention under the suspended sentence by 2;

(b) the child shall not be required to participate in a work project or programme for more than 8 hours on any one day;

(c) the recognizance shall expire on the completion by the child of the period of participation in the work project or programme.

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

7. Section 54 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) A magistrate of the Court may not sentence a child to detention for more than one year.

Amendment of  
s. 62—  
The Training  
Centre Review  
Board.

8. Section 62 of the principal Act is amended by inserting after subsection (4) the following subsection:

(4a) The Governor may appoint a suitable person to be a deputy of an appointed member of the Training Centre Review Board and such a person may act as a member of the Training Centre Review Board in the absence of the member of whom he has been appointed a deputy.

Amendment of  
s. 64—  
Conditional  
release from  
detention by  
Training Centre  
Review Board.

9. Section 64 of the principal Act is amended—

(a) by striking out from subsection (5) the word "The" and substituting the passage "Subject to subsection (5a), the";

(b) by striking out subsection (6) and substituting the following subsections:

(5a) Where the Minister believes on reasonable grounds that, if served with an application under subsection (4), the child would be likely to abscond, the Minister may apply to a Judge—

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

and

(b) to dispense with the requirement to serve the application under subsection (4).

(5b) A Judge shall not grant an application under subsection (5a) unless satisfied, on information given on oath, that there are reasonable grounds to believe that, if served with the application under subsection (4), the child would be likely to abscond.

(5c) Where—

(a) a child upon whom a notice under subsection (4) is to be served cannot be found;

or

(b) a child, having been served with such a notice, 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.

(6) A warrant issued under this section authorizes the apprehension of the child referred to in the warrant by a member of the police force or an officer of the Department authorized for the purpose.;

and

(c) by striking out from subsection (7) the passage "subsection (6) of this section" and substituting the passage "a warrant issued under this section".

10. Section 76 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) An appeal under this section shall be heard by a single Judge of the Supreme Court.

Amendment of s. 76—  
Appeals from orders, etc., under Part III and other Acts.

11. Section 81 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) The Governor may appoint a suitable person to be a deputy of a member of the Advisory Committee and such a person may act as a member of the Advisory Committee in the absence of the member of whom he has been appointed a deputy.

Amendment of s. 81—  
Establishment of the Children's Court Advisory Committee.

12. Section 93 of the principal Act is amended by inserting the following subsection before subsection (1) (now to be designated as subsection (1a)):

(1) A person shall not publish, whether by radio, television, newspaper or otherwise, a report of a charge laid against a child, if the report identifies the child or contains information tending to identify the child.

Amendment of s. 93—  
Restriction on reports of proceedings in respect of children.

13. The following section is inserted after section 99a of the principal Act:

Insertion of new s. 99b.

Special provisions  
relating to work  
projects or  
programmes.

99b. Where a child is required to participate in a work project or programme, whether pursuant to a condition of a recognizance under section 51 or to a requirement of the Director-General under section 99a, the following provisions apply:

- (a) the Minister shall, at the cost of the Crown, insure the child against death or bodily injury arising out of, or occurring in the course of, work undertaken during the project or programme;
- (b) the child shall not be required to participate in the project or programme at a time that would interfere with the child's gainful employment or with a course of training or instruction relating to, or likely to assist the child in obtaining, gainful employment;
- (c) the child shall not be entitled to any remuneration for work undertaken during the project or programme;
- (d) the project or programme must be for the benefit of persons who are disadvantaged through age, illness, incapacity or any other adversity or an organization that does not seek to secure a pecuniary profit for its members;
- (e) the child shall not be required to undertake any work that would ordinarily be performed by a person for fee or reward and for which funds are available.

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

14. Section 100 of the principal Act is amended by inserting after subsection (1d) the following subsections:

(1e) Where a child who is of or above the age of 18 years is being detained in a training centre or any other place pursuant to an order of a court, the child or the Director-General on behalf of the child may apply to a Judge of the Children's Court for an order that the child be held in custody in a prison for the remainder of the period of detention.

(1f) The Court shall not make an order under subsection (1e) unless satisfied that, in the circumstances, a prison would be an appropriate place for the child to be held for the remainder of the period of detention.

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

C. L. LAUCKE, Governor's Deputy