



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 29 of 1988

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

[Assented to 21 April 1988]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the "Children's Protection and Young Offenders Act Amendment Act, 1988". Short title.
- (2) The Children's Protection and Young Offenders Act, 1979, is in this Act referred to as "the principal Act".
2. (1) This Act will come into operation on a day to be fixed by proclamation. Commencement.
- (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.
3. Section 4 of the principal Act is amended by inserting after the definition of "truancy" the following definition: Amendment of s. 4— Interpretation.
- "working day" means a day of the week other than Saturday, Sunday or a public holiday.
4. Section 7 of the principal Act is amended— Amendment of s. 7— Factors to be considered in dealing with a child.
- (a) by striking out "care, correction, control or guidance" and substituting "care, protection, control, correction or guidance";
- (b) by inserting after paragraph (c) the following paragraph:
- (ca) the child's ethnic or racial background and the need to guard against damage to the child's sense of cultural identity;;

and

(c) by inserting after its present contents, as amended (now to be designated subsection (1)) the following subsection:

(2) Where the proceedings are under Part III, the court, panel or other body or person must, in complying with the requirements of subsection (1), regard the interests of the child as the paramount consideration.

Repeal of heading to Part III and substitution of new heading.

5. The heading to Part III of the principal Act is repealed and the following heading is substituted:

CHILDREN IN NEED OF CARE OR PROTECTION

Amendment of s. 12—
Application for declaration that child is in need of care.

6. Section 12 of the principal Act is amended—

(a) by inserting in subsection (1) “or protection” after “in need of care” first occurring;

(b) by inserting in paragraph (a) of subsection (1) “or a person residing with” after “a guardian of”;

(c) by striking out paragraph (ca) from subsection (1);

(d) by inserting in subsection (1) “or protection” after “in need of care” second occurring;

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

(1a) Before making an application under this section in respect of a child, the Minister—

(a) should, except in cases where urgent action is required, arrange for a conference between appropriate employees of the Department and the Children's Interests Bureau to provide advice assisting the Minister to decide on the action that should be taken in relation to the child;

and

(b) should, unless of the opinion that to do so would not be in the best interests of the child, have the guardians of the child notified in writing of the action that is being contemplated, the possible consequences of an application under this section, and of the availability of legal advice and any other relevant assistance.

and

(f) by striking out subsection (2) and substituting the following subsection:

(2) The following persons are parties to an application under this section:

- (a) the Minister;
 - (b) the child the subject of the application;
 - (c) each guardian of the child;
- and
- (d) where a ground of the application is that a person residing with the child has maltreated or neglected the child—that person.

7. Section 13 of the principal Act is amended—

Amendment of
s. 13—
Service of
application.

- (a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) The Minister must cause a copy of an application under section 12 to be served—

- (a) on the child the subject of the application, if the child is of or above the age of 10 years;

and

- (b) on each other party to the application.

(2) The application must be served personally, but—

- (a) if it is not practicable to serve the application personally on a party (not being the child);

or

- (b) if the whereabouts of such a party has not, after reasonable enquiries, been ascertained,

the application may be served on that person by post addressed to the person at his or her last known place of residence or employment.;

and

- (b) by inserting after subsection (3) the following subsection:

(4) The Court must not, unless it thinks urgent action is required, proceed to hear an application under this section if any party served with the application has not had at least five days' notice of the hearing.

8. Section 14 of the principal Act is amended—

Amendment of
s. 14—
Orders Court may
make.

- (a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) If the Court finds, on an application under this Part, that a child is in need of care or protection on any of the grounds referred to in section 12, the Court will make a declaration to that effect and, subject to subsection (2), may do any one or more of the following things:

- (a) place the child under the guardianship of the Minister or any other person for a specified period;
- (b) place the child under the control of the Director-General for a specified period, but only to such extent, specified in the order, as the Court thinks necessary to secure the proper care, protection or control of the child;
- (c) direct that the child reside, or not reside, with a specified person or in a specified place;
- (d) direct that a guardian of the child take specified steps to secure the proper care, protection or control of the child;
- (e) direct a person who is, or has been, residing with the child (if that person is a party to the application) to do any one or more of the following:
 - (i) to cease or refrain from residing in the same premises as the child;
 - (ii) to refrain from coming within a specified distance of the child's residence;
 - (iii) to refrain from having any contact with the child except in the presence of some other person;or
 - (iv) to refrain from having any contact at all with the child;
- (f) if an order is made under paragraph (a) or (b), direct—
 - (i) that any specified person be allowed, or not be allowed, access to the child;
 - (ii) that the Minister or other guardian exercise his or her powers under the order in a specified manner;
- (g) make such other ancillary orders as the Court thinks fit.

(2) Where the Court finds that a child is in need of care or protection on the ground that a person (not being a guardian) residing with the child has maltreated or neglected the child, the Court may not make an order for guardianship under subsection (1) (a) unless satisfied that the guardians of the child knew, or ought to have known, of the maltreatment or neglect.;

- (b) by inserting in subsection (3) "or protection" after "in need of care";
- (c) by striking out subsection (5) and substituting the following subsection:

(5) On the expiration of the period of adjournment or at such earlier time as the Court, on application by a party to the application, allows, the Court may—

- (a) declare that the child is no longer in need of care or protection and discharge any order;
 - (b) affirm the declaration that the child is in need of care or protection;
 - (c) affirm or vary the terms of any order;
 - (d) discharge any order;
- or
- (e) make any order that the Court is empowered to make under subsection (1).;

and

(d) by striking out subsection (7) and substituting the following subsection:

(7) A party to the application (other than the child) who, having been served personally with an order made under this section, contravenes or fails to comply with the order is guilty of an offence.

Penalty: Imprisonment for three months.

9. Section 15 of the principal Act is amended—

- (a) by striking out from subsection (1) "Subject to subsection (2) of this section, any" and substituting "A";
- (b) by striking out subsection (2);

and

(c) by inserting in subsection (6) "or protection" after "in need of care" wherever it occurs.

Amendment of
s. 15—
Variation or
discharge or
orders.

10. Section 16 of the principal Act is amended—

- (a) by striking out from subsection (1) "twenty-eight days" and substituting "thirty-five days";

and

(b) by striking out subsection (2) and substituting the following subsection:

(2) The Court must not, except with the approval of the Senior Judge, adjourn the hearing of an application more than once.;

and

(c) by striking out subsection (3) and substituting the following subsections:

Amendment of
s. 16—
General power of
adjournment.

(3) The Court may, on an adjournment under this section, do any one or more of the following things:

- (a) place the child under the guardianship of the Minister;
- (b) direct that the child reside with a specified person or in a specified place;
- (c) direct that a guardian of the child take specified steps to secure the proper care, protection or control of the child;
- (d) if an order is made under paragraph (a), direct—
 - (i) that any specified person be allowed, or not be allowed, access to the child;
 - (ii) that the Minister exercise his or her powers under the order in a specified manner;
- (e) make such other ancillary orders as the Court thinks fit.

(4) An order under subsection (3) has effect only during the period of the adjournment.

(5) A party to the application (other than the child) who, having been served personally with an order made under this section, contravenes or fails to comply with the order is guilty of an offence.

Penalty: Imprisonment for three months.

Amendment of
s. 17—
Procedural
provisions.

11. Section 17 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection:

(2a) Proceedings under this Part must be dealt with expeditiously.;

(b) by inserting after subsection (3) the following subsections:

(3a) The Court must not proceed to hear an application under this Part unless—

(a) the child the subject of the application is represented in the proceedings by a legal practitioner;

or

(b) the Court is satisfied that the child has made an informed and independent decision not to be so represented.

(3b) Where the child is to be represented by, but is not capable of properly instructing, a legal practitioner, the legal practitioner must represent to the Court his or her view as to what constitutes the interests of the child.

(3c) The Court must not make a final order in any proceedings under this Part unless—

(a) the child has been afforded a reasonable opportunity to appear in person before the Court and make such representations to the Court as the child wishes;

or

(b) the Court is satisfied that the child is not capable of appearing and making representations.;

(c) by striking out subsection (4) and substituting the following subsection:

(4) The Court may require such reports as the Court thinks desirable to assist it in making any determination, decision or order under this Part.;

and

(d) by inserting after subsection (5) the following subsections:

(6) If the Court thinks it desirable to do so in order to expedite the proceedings, it may, at any time before or during the hearing of an application under this Part, convene a conference between the parties to the proceedings for the purposes of determining which matters are, or are not, in dispute, or of resolving any matters in dispute.

(7) A member of the Court other than the member who is hearing, or is to hear, the proceedings will preside over such a conference.

(8) Counsel for a party to the proceedings will, unless the party requests to the contrary, attend the conference.

(9) Evidence of anything said or done at a conference is inadmissible in proceedings under this Act or any other Act or law (other than proceedings arising out of the conduct of any person during the conference).

12. Section 18 of the principal Act is amended by striking out "the child the subject of the proceedings, or a guardian of the child," and substituting "any other party to the proceedings".

Orders for costs.

13. Section 19 of the principal Act is amended by inserting in subsection (2) "or protection" after "in need of care".

Amendment of s. 19—
Detention of children suspected to be in need of care or protection.

14. Section 20 of the principal Act is amended by striking out from subsection (1) "twenty-eight days" and substituting "thirty-five days".

Amendment of s. 20—
How jurisdiction is exercised.

15. Section 21 of the principal Act is repealed.

Repeal of s. 21.

16. Section 22 of the principal Act is repealed and the following section is substituted:

Repeal of s. 22 and substitution of new section.

Effect of
guardianship
order.

22. While a child is under the guardianship of the Minister or any other person pursuant to an order under this Part, the Minister or other person is the lawful guardian and entitled to the custody of the child to the exclusion of the rights of any other person.

Amendment of
s. 24—
Review of
guardianship.

17. Section 24 of the principal Act is repealed and the following section is substituted:

Review of child's
progress and
circumstances.

24. (1) Where a child is subject to an order under this Part, a review of the progress and circumstances of the child—

(a) must, in the case of a child under the guardianship of the Minister, be carried out at least once in each year that the child remains under that guardianship;

and

(b) may, in any other case, be carried out at the Minister's discretion at such intervals as the Minister thinks fit.

(2) A review under this section will be conducted by a panel of persons appointed by the Minister, of whom—

(a) one must be—

(i) an employee of the Department working with the Children's Interests Bureau;

or

(ii) some other person (not being an employee of the Department) who is a suitable representative of the interests of the child;

and

(b) one must be an employee of the Department.

Amendment of
s. 25—
Application of
this Division.

18. Section 25 of the principal Act is amended by inserting after paragraph (bc) the following paragraph:

(bd) an offence, other than a prescribed offence, under the State Transport Authority Act, 1974, alleged to have been committed by a child of or over the age of 15 years;

Insertion of new
Division VIA.

19. The following Division is inserted in the principal Act after Division VI of Part IV:

DIVISION VIA—TRANSFER OF YOUNG OFFENDERS

Interpretation.

65a. In this Division—

“appropriate authority” of another State means a person who is vested with authority under a corresponding law—

(a) to authorize or arrange for the transfer of a young offender to this State;

or

(b) to authorize or arrange for the transfer of a young offender from this State to that State:

“correctional order” means an order under a law of this State or any other State for dealing with children who commit offences, being an order—

(a) for the detention (other than remand) of such a child;

(b) requiring such a child to perform community service;

(c) providing for the conditional release of such a child;

(d) placing such a child on probation or parole or under any form of supervision:

“correctional system”, in relation to a State, means the system of law, judicial and administrative authorities, correctional and other institutions under which children who commit offences are dealt with in that State:

“corresponding law” means a law of another State declared by regulation to be a law corresponding to this Division:

“escort” means a person in whose custody a young offender is placed for the purpose of bringing a young offender into the State, or taking a young offender out of the State, in pursuance of arrangements made under this Division:

“State” includes the Australian Capital Territory and the Northern Territory:

“young offender” means a person—

(a) who has been found guilty of an offence committed while under the age of 18 years;

and

(b) who is subject to a correctional order.

65b. (1) The Minister may make arrangements with the appropriate authority of another State for the transfer of a young offender to that other State.

Transfer of young offenders to other States.

(2) Before entering into arrangements under this section, the Minister must be satisfied—

(a) that any rights of appeal against the correctional order have been exhausted or have expired;

(b) that the young offender will be dealt with in the correctional system of the other State in substantially the same way as if he or she had remained in the correctional system of this State;

(c) that the transfer is in the best interests of the young offender;

and

(d) that—

(i) the young offender consents to the transfer;

or

(ii) there are special reasons justifying the transfer notwithstanding that the young offender does not consent.

(3) Before consenting to a transfer, a young offender must be allowed a reasonable opportunity to obtain independent legal advice on the question of whether the transfer is in his or her best interests.

(4) An arrangement under this section will not be carried into effect unless it has been ratified by the Court.

(5) Where a young offender is transferred to another State in pursuance of an arrangement under this section, the Minister will transmit to the appropriate authority of that other State—

(a) a copy of the relevant correctional order;

(b) a statement of—

(i) any period of detention served by the young offender in pursuance of the order;

(ii) any community service performed by the young offender in pursuance of the order;

(iii) any period for which the young offender has been subject to conditional release;

(iv) any period for which the young offender has been on probation or parole or under supervision;

(v) any remissions of sentence to which the young offender has become entitled;

(c) a report on the young offender.

(6) Where the Minister arranges for the transfer to another State of a young offender who is in detention, the Minister will arrange for the young offender to be taken to the other State in the custody of a suitable escort and delivered into detention in that other State.

(7) Where a young offender goes or is transferred to another State and is accepted into the correctional system of that other State in pursuance of arrangements under this section, the relevant correctional order ceases to operate in this State.

65c. (1) The Minister may make arrangements with the appropriate authority of another State for the transfer of a young offender from that other State to this State.

(2) Before entering into arrangements under this section, the Minister must be satisfied—

(a) that the young offender is over the age of 10 years;

- (b) that there is in force in this State a law that substantially corresponds to the law against which the young offender offended;
- (c) that the young offender is not liable to detention for an indeterminate period;
- (d) that the young offender will be dealt with in the correctional system of this State in substantially the same way as if he or she had remained in the correctional system of the other State.

(3) Where a young offender is transferred to this State in pursuance of arrangements under this section—

- (a) a copy of the correctional order must be filed in the Court;
and
- (b) the young offender will be dealt with under the law of this State as if—
 - (i) the correctional order had been made under the law of the State;
 - (ii) any period of detention, community service, conditional release, probation, parole or supervision served by the young offender in pursuance of the order had been served in the State;
 - (iii) any entitlement to remission of sentence that had accrued prior to the transfer had accrued under the law of the State.

65d. (1) An arrangement made under this Division for the transfer of a young offender may provide that the correctional order will operate with such modifications as are necessary to ensure its effective operation in the correctional system of the State to which the young offender is to be transferred.

Adaptation of
correctional
orders to different
correctional
systems.

(2) Any such modifications relating to a correctional order made under the law of another State will be endorsed on the order on its registration under this Act.

65e. (1) An escort in whose custody a young offender has been placed for the purpose of bringing the young offender into, or taking the young offender out of, the State has, while in the State, lawful custody of the young offender.

Custody during
escort.

(2) If a young offender escapes from the custody of an escort, the young offender may be arrested without warrant for the purpose of being returned to lawful custody.

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

D. B. DUNSTAN, Governor