

# STATUTES REPEAL AND AMENDMENT (CHILDREN'S PROTECTION AND YOUNG OFFENDERS) ACT 1993

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#### ANNO TRICESIMO SECUNDO

# ELIZABETHAE II REGINAE

A.D. 1993

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### No. 94 of 1993

An Act to make certain repeals and amendments related to restructuring of the juvenile justice and children's protection systems in this State; to enact transitional provisions; and for other purposes.

[Assented to 4 November 1993]

The Parliament of South Australia enacts as follows:

# PART 1 PRELIMINARY

#### Short title

1. This Act may be cited as the Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993.

#### Commencement

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

# Interpretation

3. In this Act—

"commencement day" means the day on which this Act comes into operation;

"new legislation" means-

- (a) the Young Offenders Act 1993; and
- (b) the Youth Court Act 1993;

"former legislation" means the Children's Protection and Young Offenders Act 1979.

# PART 2 REPEAL OF CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT 1979

### Repeal of Children's Protection and Young Offenders Act 1979

4. The Children's Protection and Young Offenders Act 1979 is repealed.

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# PART 3 AMENDMENT OF BAIL ACT 1985

#### Amendment of s. 13-Procedure on arrest

- 5. Section 13 of the Bail Act 1985 is amended—
- (a) by striking out "a justice" wherever it appears in subsections (2) and (3) and substituting, in each case, "the appropriate authority";
- (b) by striking out from subsection (4) "A justice" and "the justice" and substituting, respectively, "The appropriate authority" and "the authority";
- (c) by inserting after subsection (4) the following subsection:
  - (5) In this section—

# "appropriate authority" means-

- (a) in relation to a child—the Youth Court of South Australia;
- (b) in any other case—a justice.

# PART 4 AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

### **Interpretation of Part**

6. In this Part a reference to the principal Act is a reference to the Criminal Law (Sentencing) Act 1988.

### Amendment of s. 3—Interpretation

- 7. Section 3 of the principal Act is amended—
- (a) by striking out the definition of "appropriate officer" from subsection (1) and substituting the following definition:

# "appropriate officer" means—

- (a) the Sheriff; or
- (b) a registrar of the Magistrates Court; or
- (c) the Registrar of the Youth Court;
- (b) by striking out from the definition of "court" in subsection (1) "(other than the Children's Court);

(c) by inserting after the definition of "working day" in subsection (1) the following definitions:

"youth" has the same meaning as in the Young Offenders Act 1993;

"Youth Court" means the Youth Court of South Australia.

#### Substitution of s. 21

1993

8. Section 21 of the principal Act is repealed and the following section is substituted:

#### Application

- 21. (1) Subject to subsection (2), this Division does not apply in relation to a youth.
- (2) The Supreme Court may exercise its powers under section 23 in relation to a youth who is sentenced as an adult pursuant to the Young Offenders Act 1993.

### Substitution of heading to Part V

9. The heading to Part V of the principal Act is repealed and the following heading is substituted:

### PART V **BONDS AND UNDERTAKINGS**

#### Insertion of s. 44A

10. The following section is inserted after section 44 of the principal Act:

#### **Application of Part to youths**

44A. This Part applies in relation to a youth found guilty of committing an offence subject to the following modifications:

- (a) references to imprisonment are to be read as references to detention;
- references to a bond are to be read as references to an order under **(b)** section 26 of the Young Offenders Act 1993;
- references to the Director are to be read as references to the Chief (c) Executive Officer of the Department of Family and Community Services;
- references to community service are to be read as references to community (d) service performed in accordance with the Young Offenders Act 1993;
- references to the probative court are to be read as references to the Youth (e) Court:
- **(f)** references to the probationer are to be read as references to the youth against whom the order is made.

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#### Insertion of s. 59AA

11. The following section is inserted after section 59 of the principal Act:

#### Application of Division to youths

59AA. If an order is made against a youth under section 26 of the Young Offenders Act 1993, this Division applies subject to the following modifications:

- (a) references to the probationer are to be read as references to the youth against whom the order is made;
- (b) references to the probative court are to be read as references to the Youth Court;
- (c) references to imprisonment are to be read as references to detention;
- (d) references to a bond are to be read as references to an order under section 26 of the Young Offenders Act 1993.

# Amendment of s. 61—Imprisonment or detention in default of payment

- 12. Section 61 of the principal Act is amended by inserting after subsection (5) the following subsection:
  - (6) This section applies to an order for payment of a pecuniary sum made against a youth by the Youth Court subject to the following modifications:
    - (a) references to imprisonment are to be read as references to detention;
    - (b) instead of issuing a warrant of commitment under subsection (3), the Court may issue a warrant to have the youth apprehended and brought before the Court to be dealt with under section 23(5) of the Young Offenders Act 1993;
    - (c) this section is in other respects to be read subject to section 23(5) and (6) of the Young Offenders Act 1993.

### Amendment of s. 61a-Driver's licence disqualification for default

- 13. Section 61a of the principal Act is amended—
- (a) by striking out from subsection (1) ", instead of issuing a warrant of commitment,";
- (b) by striking out from subsection (5) "issuing a warrant of commitment" and substituting "taking other proceedings";
- (c) by striking out from subsection (6) "(whether by payment or imprisonment)" and substituting "(whether by payment, imprisonment, detention or community service)".

Amendment of s. 67—Application to work off pecuniary sums by community service

- 14. Section 67 of the principal Act is amended by inserting after subsection (17) the following subsection:
  - (18) If a youth is ordered to pay a pecuniary sum under the Young Offenders Act 1993, this section applies subject to the following modifications:
    - references to the Director are to be read as references to the Chief (a) Executive Officer of the Department of Family and Community Services;
    - references to community service are to be read as references to community **(b)** service performed in accordance with the Young Offenders Act 1993;
    - the Chief Executive Officer of the Department of Family and Community (c) Services may permit an applicant to enter into an undertaking (in a form and on terms approved by the Chief Executive Officer) to perform community service if there is, or will be within a reasonable time, a suitable placement for the youth in a community service program (and this power operates to the exclusion of the power contained in subsection (5)).

Amendment of s. 69—Amount in default is reduced by imprisonment or detention served 15. Section 69 of the principal Act is amended by inserting after subsection (6) the following subsection:

- (7) This section applies to an order for detention for non-payment of a pecuniary sum made against a youth by the Youth Court subject to the following modifications:
  - references to imprisonment are to be read as references to detention; (a)
  - **(b)** references to a warrant for the imprisonment of a person are to be read as references to an order for detention under section 23(5) of the Young Offenders Act 1993;
  - references to the manager of the prison are to be read as references to the (c) person in charge of the training centre at which the youth is detained;
  - (d)this section is in other respects to be read subject to section 23(5) and (6) of the Young Offenders Act 1993.

# Amendment of s. 71—Community service orders may be enforced by imprisonment or detention

- 16. Section 71 of the principal Act is amended by inserting after subsection (8) the following subsection:
  - (9) This section applies to an order for community service made against a youth by the Youth Court subject to the following modifications:
    - (a) references to imprisonment are to be read as references to detention;
    - **(b)** instead of issuing a warrant of commitment under subsection (5), the Court may issue a warrant for the youth's apprehension and detention for the appropriate term determined in accordance with subsection (2);

references to a warrant of commitment are to be read as references to a (c) warrant issued under paragraph (b).

#### Amendment of s. 71a-Other non-pecuniary orders may be enforced by imprisonment or detention

- 17. Section 71a of the principal Act is amended by inserting after subsection (4) the following subsection:
  - (5) This section applies to an order requiring a youth to do some act (other than the performance of community service or the payment of a pecuniary sum) made against the youth by the Youth Court subject to the following modifications:
    - references to imprisonment are to be read as references to detention; (a)
    - instead of issuing a warrant of commitment under subsection (3), the Court **(b)** may issue a warrant for the youth's apprehension and detention.

### PART 5 TRANSITIONAL PROVISIONS

### Transitional provisions—Youth Court

18. On the commencement of the Youth Court Act 1993 the non-judicial staff of the Children's Court of South Australia are transferred to corresponding positions on the staff of the Youth Court of South Australia.

## Transitional provisions—offences

- 19. (1) Proceedings in relation to an offence alleged to have been committed before the commencement day may be taken under the new legislation.
- (2) Proceedings before the Children's Court of South Australia under the former legislation in relation to such an offence may be continued and completed before the Youth Court of South Australia under the new legislation.
- (3) A person may not be subjected to a penalty under the new legislation for an offence committed before the commencement day unless-
  - (a) the penalty is of the same nature as could have been imposed under the former legislation (and for this purpose an order under section 26 of the Young Offenders Act 1993 is to be taken to be of the same nature as a bond); and
  - (b) the penalty is no more severe than could have been properly imposed under the former legislation.
- (4) A judge or magistrate who was a judicial officer of the Children's Court of South Australia may (even though not a judicial officer of the Youth Court of South Australia) sit as a member of the Youth Court of South Australia for the purpose of continuing and completing the hearing and determination of proceedings commenced or part heard before the commencement day.

- (5) An order or bond in force under Part IV of the former legislation immediately before the commencement day remains in force under, but subject to, the former legislation.
- (6) The former legislation remains in force in relation to an order or bond to which subsection (5) applies, and any further order or bond imposed on breach of the order or bond or in relation to the same offence, as if references to the *Children's Court of South Australia* were references to the *Youth Court of South Australia*, and with any further modifications that may be prescribed by regulation.

### Transitional provisions—in need of care proceedings

- 20. (1) Where a conference was held in respect of a child under section 12(1a) of the former legislation but no application had been made under that section in respect of the child before the commencement day, the Minister is not required to (but may if he or she thinks fit) hold a family care meeting in relation to the child before any proceedings are commenced under the *Children's Protection Act 1993* in respect of the child, provided that those proceedings are commenced within one month of the commencement day.
- (2) Where the Children's Court is continuing to hear and determine proceedings under Part III of the former legislation, the orders that the Court is empowered to make in relation to the child the subject of the proceedings are those that the Youth Court is empowered to make in similar proceedings under the *Children's Protection Act 1993*.
- (3) An order in force under Part III of the former legislation immediately before the commencement day—
  - (a) remains in force, according to its terms; and
  - (b) will be taken to have been made by the Youth Court; and
  - (c) in the case of an order placing a child under the control of the Director-General empowering the Director-General to make decisions as to where the child will reside, will be taken to be an order granting custody of the child to the Minister.
- (4) A child who was, immediately before the commencement day, being held in the custody of the Director-General under section 19 of the former legislation, may continue to be so held in accordance with that section, as if it were still in force.

#### Interpretation of Acts and instruments

- 21. The following provisions apply to the interpretation of Acts and instruments (whether of a legislative character or not):
  - (a) a reference to the Children's Court of South Australia will be construed as a reference to the Youth Court of South Australia;
  - (b) a reference to an officer of the Children's Court of South Australia will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the Youth Court of South Australia.

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

ROMA MITCHELL Governor