

South Australia

## **Youth Court Act 1993**

An Act to establish the Youth Court of South Australia; to define its jurisdiction and powers; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Youth Court Act 1993*.

### **3—Interpretation**

In this Act, unless the contrary intention appears—

***Court*** or ***Youth Court*** means the *Youth Court of South Australia*;

***Department*** means the *Department of Family and Community Services*;

***evidentiary material*** means any document, object or substance of evidentiary value in proceedings before the Court and includes any document, object or substance that should, in the opinion of the Court, be produced for the purpose of enabling the Court to determine whether or not it has evidentiary value;

***judicial office*** means the office of Judge, magistrate or special justice;

***judgment*** includes a declaration or order;

***Registrar*** means the Registrar of the Court.

## **Part 2—Youth Court of South Australia**

### **Division 1—Establishment of Court**

#### **4—Establishment of Court**

The *Youth Court of South Australia* is established.

#### **5—Court of record**

The Court is a court of record.

#### **6—Seals**

- (1) The Court will have such seals as are necessary for the transaction of its business.
- (2) A document apparently sealed with a seal of the Court will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Court.

### **Division 2—Jurisdiction of the Court**

#### **7—Jurisdiction**

The Court—

- (a) has jurisdiction to hear and determine proceedings under the *Children's Protection Act 1993*; and
- (b) has the civil and criminal jurisdiction conferred by the *Young Offenders Act 1993*; and
- (c) has the same jurisdiction as the Magistrates Court to make a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* where the person for or against whom protection is sought is a child or youth, and has power under that Act to vary or revoke such an order previously made by the Court; and
- (d) has the powers conferred on a court or justice by the *Bail Act 1985*; and
- (e) has any other civil or criminal jurisdiction conferred by statute.

### **Division 3—Court's duty to explain proceedings**

#### **8—Duty to explain proceedings**

The Court has a duty to ensure, as far as practicable, that parties to proceedings before the Court understand the nature and the purpose of those proceedings.

## **Part 3—Composition and administration of the Court**

### **Division 1—The Court's judiciary**

#### **9—The Court's judiciary**

- (1) The Court's judiciary consists of—
  - (a) the Senior Judge of the Court; and
  - (b) the Judges of the Court; and
  - (c) the Magistrates of the Court; and
  - (d) the special justices of the Court.
- (2) The Senior Judge is a District Court Judge designated by proclamation as the Senior Judge of the Court.
- (3) The Judges of the Court are District Court Judges designated by proclamation as Judges of the Court.
- (4) The Magistrates of the Court are Magistrates designated by proclamation as Magistrates of the Court.
- (5) The special justices of the Court are special justices designated by proclamation as special justices of the Court.
- (6) The designation of a person as a member of the Court's judiciary does not prevent the person from performing judicial functions unrelated to the Court.
- (7) A proclamation designating a person as a member of the Court's judiciary must classify the person either as a member of the Court's principal judiciary (ie those members of its judiciary who are to be occupied predominantly in the Court) or as a member of the Court's ancillary judiciary (ie those members of its judiciary who are not occupied predominantly in the Court).
- (8) A proclamation designating a person as a member of the Court's principal judiciary must, subject to subsection (9), state a term for which the person is to be a member of the Court's principal judiciary.
- (9) A person cannot be a member of the Court's principal judiciary for a term exceeding 10 years, or a series of terms exceeding 10 years in aggregate.
- (10) A proclamation under this section may, subject to this section, be varied or revoked by subsequent proclamation.

#### **10—The Senior Judge**

- (1) The Senior Judge is the principal judicial officer of the Court.
- (2) The Senior Judge is responsible for the administration of the Court.
- (3) In the absence of the Senior Judge from official duties, responsibility for administration of the Court devolves on the most senior of the Judges of the Court who is available to assume that responsibility.

- (4) The Senior Judge may exercise the powers of the Chief Magistrate under the *Magistrates Act 1983* in place of the Chief Magistrate in relation to a Magistrate who is a member of the Court's principal judiciary.

## **Division 2—The Court's administrative and ancillary staff**

### **11—Administrative and ancillary staff**

- (1) The Court's administrative and ancillary staff consists of—
  - (a) the Registrar; and
  - (b) any other persons appointed to the non-judicial staff of the Court.
- (2) The Court's administrative and ancillary staff will be appointed under the *Courts Administration Act 1993*.

### **12—The Registrar**

- (1) The Registrar is the Court's principal administrative officer.
- (2) A person cannot be appointed to the office of Registrar of the Court, nor can a person holding that office be dismissed or reduced in status, except on the recommendation, or with the concurrence, of the Senior Judge.

### **13—Responsibilities of staff**

A member of the Court's administrative or ancillary staff is responsible to the Senior Judge (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

## **Division 3—Sitting and distribution of business**

### **14—Constitution of Court**

- (1) Subject to this section, the Court, when sitting to adjudicate on any matter must be constituted of a Judge or a Magistrate.
- (2) The Court, when sitting to hear and determine a charge of a major indictable offence, must be constituted of a Judge.
- (3) The Court, when constituted of a Magistrate in criminal proceedings, may not impose a sentence of detention for more than 2 years.
- (4) The Court may be constituted of a special justice if there is no Judge or Magistrate available to constitute the Court but the Court, when so constituted—
  - (a) may not impose a sentence of detention in criminal proceedings; and
  - (b) may not hear and determine proceedings in which an order for the protection or care of a child is sought.
- (5) If the Court, when constituted of a Magistrate or a special justice in criminal proceedings, is of the opinion that the limitation on its powers imposed under this section prevents it from imposing an appropriate sentence, the Court may adjourn the question of sentence for hearing and determination by a Judge.
- (6) The Court may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.

- (7) A Registrar or special justice may—
- (a) issue summonses and warrants on behalf of the Court; or
  - (b) adjourn proceedings; or
  - (c) exercise any procedural or non-judicial powers assigned by the rules.

### **15—Time and place of sittings**

- (1) The Court may sit at any time (including a Sunday).
- (2) The Court may sit at any place (either in or outside the State).
- (3) The Court will sit at such times and places as the Senior Judge directs.

### **16—Adjournment from time to time and place to place**

The Court may—

- (a) adjourn proceedings from time to time and from place to place; or
- (b) adjourn proceedings to a time and place to be fixed; or
- (c) order the transfer of proceedings from place to place.

### **17—Segregation of proceedings**

The Court should, as far as practicable, segregate civil and criminal proceedings.

## **Part 4—Evidentiary powers**

### **18—Power to require attendance of witnesses and production of evidentiary material**

- (1) The Court may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Court at a specified time and place to give evidence or to produce evidentiary material (or both).
- (2) A summons to produce evidentiary material may, instead of providing for production of the material before the Court, provide for production of the material to an officer of the Court nominated in the summons.
- (3) If—
  - (a) a person fails to comply with a summons under subsection (1); or
  - (b) there are grounds for believing that, if such a summons were issued, a person would not comply with it,

the Court may issue a warrant to have the person arrested and brought before the Court.

### **19—Power to compel the giving of evidence**

- (1) A person who is called to give evidence or to produce evidentiary material before the Court and—
  - (a) refuses or fails to make an oath or affirmation when required to do so by the Court; or

- (b) refuses or fails to give evidence on a subject on which that person is compellable to give evidence; or
- (c) refuses or fails, without reasonable excuse, to produce evidentiary material that the person is required by the Court to produce,

commits a contempt of the Court.

- (2) This section applies whether the person was summoned before the Court, brought before the Court on a warrant, or came to the Court of his or her own volition.

## **20—Entry and inspection of property**

- (1) The Court may enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.
- (2) The Court may authorise an officer of the Court to enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.
- (3) A person who obstructs the Court, or a person authorised by the Court, in the exercise of a power of entry of inspection under this section commits a contempt of the Court.

## **21—Production of persons held in custody**

If the Court requires the attendance before it of any person who is held in custody in the State, the Court may—

- (a) issue a summons or a notice requiring the custodian to produce the person before the Court at a nominated time and place; or
- (b) issue a warrant authorising the sheriff, or a member of the police force, to take the person from the custodian and bring him or her before the Court.

# **Part 5—Appellate proceedings**

## **22—Appeals**

- (1) A party to proceedings in the Court may appeal against any judgment given in the proceedings (including an acquittal on a charge of a summary or indictable offence) but an appeal does not lie against a judgment in a preliminary examination.
- (2) The appeal lies—
  - (a) in the case of an interlocutory judgment given by a Magistrate or a special justice—to the Senior Judge;
  - (b) in the case of an interlocutory judgment given by a Judge—to the Supreme Court constituted of a single Judge;
  - (c) in the case of any other judgment given by a Magistrate or a special justice—to the Supreme Court constituted of a single Judge;
  - (d) in the case of any other judgment given by a Judge—to the Full Court of the Supreme Court.

- (3) On the appeal, the appellate court may exercise any one or more of the following powers:
- (a) it may confirm, vary or quash the judgment subject to the appeal and, if the court thinks the interests of justice so require, it may vary or quash any other judgment given in the same or related proceedings;
  - (b) it may remit the matter for hearing or further hearing;
  - (c) it may make any other order (including an order for costs) that may be necessary or desirable in the circumstances.

### **23—Reservation of question of law**

- (1) The Court may reserve any question of law arising in proceedings (except a preliminary examination) for determination by the Supreme Court.
- (2) The Supreme Court may determine the question reserved and give any consequential orders or directions that may be appropriate in the circumstances of the case.

## **Part 6—Confidentiality of proceedings**

### **24—Persons who may be present in Court**

- (1) Subject to this section, no person may be present at any sitting of the Court except—
  - (a) officers of the Court;
  - (b) officers of the Department of Family and Community Services;
  - (c) parties to the proceedings and their legal representatives;
  - (d) witnesses while giving evidence or permitted by the Court to remain in the Court;
  - (e) a guardian of the child or youth to whom the proceedings relate;
  - (f) if the proceedings relate to an offence or alleged offence—
    - (i) an alleged victim of the offence and a person chosen by the victim to provide support for the victim;
    - (ii) a genuine representative of the news media;
    - (iii) if a guardian of the youth who committed, or is alleged to have committed, the offence is not present—an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth;
  - (h) any other persons authorised by the Court to be present.
- (2) The Court may, however, exclude any of those persons from the Court if the Court considers it necessary to do so in the interests of the proper administration of justice.

## **Part 7—Miscellaneous**

### **26—Immunities**

A Judge, Magistrate or other person exercising the jurisdiction of the Court has the same privileges and immunities from civil liability as a Judge of the Supreme Court.



## **27—Contempt in the face of the Court**

A person who—

- (a) interrupts the proceedings of the Court or misbehaves before the Court; or
  - (b) insults a Judge, Magistrate, Registrar or other officer of the Court who is acting in the exercise of official functions; or
  - (c) refuses, in the face of the Court, to obey a lawful direction of the Court,
- is guilty of a contempt of the Court.

## **28—Punishment of contempt**

The Court may punish a contempt as follows:

- (a) if the person guilty of the contempt is a child or youth—it may impose a fine not exceeding \$2 500 or commit the child or youth to a training centre for a period not exceeding 6 months;
- (b) if the person guilty of the contempt is an adult—it may impose a fine not exceeding \$10 000 or commit the person to prison for a period not exceeding 2 years.

## **29—Authority for imprisonment or detention**

- (1) If the Court makes an order for imprisonment or detention, a copy of the order under the Court's seal is a sufficient warrant to apprehend the person against whom the order was made, to take that person to the prison, training centre or other place contemplated by the order, and to imprison or detain that person in accordance with the order.
- (2) The Court may, however, issue a warrant for the person's apprehension and imprisonment or detention if the Court considers it appropriate to do so.

## **30—Age**

If the Court does not have available to it satisfactory evidence of the age of a person in relation to whom proceedings have been brought before the Court, the Court may make its own estimate of the age of that person and act on the basis of that estimate.

## **31—Legal process**

- (1) Any process of the Court may be issued, served or executed on a Sunday as well as any other day.
- (2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

## **32—Rules of Court**

- (1) Rules of the Court may be made—
  - (a) regulating the business of the Court and the duties of the various officers of the Court;
  - (b) regulating the custody and use of the Court's seals;
  - (c) regulating the practice and procedure of the Court;

- (d) regulating the form in which evidence is taken or received by the Court;
  - (e) regulating costs;
  - (f) dealing with any other matter necessary or expedient for the effective and efficient operation of the Court.
- (2) The rules may be made by the Judges and Magistrates who are members of the principal judiciary of the Court.
- (3) Rules of the Court take effect from the date of publication in the Gazette or some later date specified in the rules.

### **33—Court fees**

- (1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Court.
- (2) The Court may remit or reduce a fee on account of the poverty of the party by whom the fee is payable or for any other proper reason.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Youth Court Act 1993* amended the following:

*Courts Administration Act 1993*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	58	<i>Youth Court Act 1993</i>	27.5.1993	1.1.1994 ( <i>Gazette 4.11.1993 p2177</i> )
1995	85	<i>Statutes Amendment (Courts Administration Staff) Act 1995</i>	30.11.1995	14.12.1995 ( <i>Gazette 14.12.1995 p1641</i> )
1996	68	<i>Statutes Amendment (Sentencing of Young Offenders) Act 1996</i>	15.8.1996	8.10.1996 ( <i>Gazette 29.8.1996 p810</i> )
1998	59	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1998</i>	3.9.1998	Pt 14 (s 23)—13.12.1998 ( <i>Gazette 3.12.1998 p1676</i> )
1999	42	<i>Statutes Amendment and Repeal (Justice Portfolio) Act 1999</i>	5.8.1999	Pt 14 (s 60)—3.10.1999 ( <i>Gazette 23.9.1999 p1208</i> )
2001	14	<i>Youth Court (Judicial Tenure) Amendment Act 2001</i>	12.4.2001	12.4.2001
2004	23	<i>Statutes Amendment (Courts) Act 2004</i>	8.7.2004	Pt 11 (s 29)—1.9.2004 ( <i>Gazette 26.8.2004 p3402</i> )
<b>2005</b>	<b>56</b>	<b><i>Justices of the Peace Act 2005</i></b>	<b>17.11.2005</b>	<b>Sch 2 (cll 46—50)—1.7.2006 (<i>Gazette 22.6.2006 p2012</i>)</b>
2007	48	<i>Statutes Amendment (Victims of Crime) Act 2007</i>	8.11.2007	Pt 6 (s 18)—uncommenced

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.9.2004
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.9.2004</i>
s 3		
<b>judicial office</b>	<b>amended by 56/2005 Sch 2 cl 46</b>	<b>1.7.2006</b>
Pt 2		
s 7	amended by 68/1996 s 65	8.10.1996
Pt 3		
s 9		
s 9(1)	<b>amended by 56/2005 Sch 2 cl 47(1)</b>	<b>1.7.2006</b>
s 9(5)	<b>amended by 56/2005 Sch 2 cl 47(2)</b>	<b>1.7.2006</b>
s 9(9)	amended by 59/1998 s 23	13.12.1998
	substituted by 14/2001 s 2	12.4.2001
s 10		
s 10(4)	inserted by 68/1996 s 66	8.10.1996
s 11		
s 11(2)	amended by 85/1995 s 19	14.12.1995
s 14		
s 14(4)	<b>amended by 56/2005 Sch 2 cl 48(1)</b>	<b>1.7.2006</b>
s 14(5)	<b>amended by 56/2005 Sch 2 cl 48(2)</b>	<b>1.7.2006</b>
s 14(7)	<b>amended by 56/2005 Sch 2 cl 48(3)</b>	<b>1.7.2006</b>
Pt 5		
s 22		
s 22(2)	<b>amended by 56/2005 Sch 2 cl 49(1), (2)</b>	<b>1.7.2006</b>
Pt 6		
s 24		
s 24(1)	(g) deleted by 23/2004 s 29	1.9.2004
s 25	<i>amended by 68/1996 s 67</i>	<i>8.10.1996</i>
	<i>deleted by 42/1999 s 60</i>	<i>3.10.1999</i>
Pt 7		
s 28	amended by 68/1996 s 68	8.10.1996
s 32		
s 32(2)	amended by 68/1996 s 69	8.10.1996
Sch	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.9.2004</i>

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993***

#### **18—Transitional provisions—Youth Court**

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.

#### **21—Interpretation of Acts and instruments**

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.

### ***Statutes Amendment (Courts Administration Staff) Act 1995***

#### **20—Transitional provision**

- (1) An appointment to a non-judicial office or position made or purportedly made before the commencement of this Act in accordance with an Act that is amended by this Act will be taken to have been duly made under the statutory provisions that, as amended by this Act, provide for the making of such an appointment as if this Act had been enacted and in force at the relevant time.

### ***Justices of the Peace Act 2005, Sch 2***

#### **50—Transitional provision**

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Youth Court Act 1993* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).

## **Historical versions**

Reprint No 1—14.12.1995

Reprint No 2—8.10.1996

Reprint No 3—13.12.1998

Reprint No 4—3.10.1999

Reprint No 5—12.4.2001

1.9.2004