



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 65 of 1982

An Act to amend the Children's Protection and Young Offenders Act, 1979-1980.

[Assented to 1 July 1982]

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

1. (1) This Act may be cited as the "Children's Protection and Young Offenders Act Amendment Act, 1982". Short titles.

(2) The Children's Protection and Young Offenders Act, 1979-1980, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Children's Protection and Young Offenders Act, 1979-1982".

2. Section 4 of the principal Act is amended by inserting after the definition of "adult court" the following definition: Amendment of s. 4— Interpretation.

"alternative offence", in relation to an offence for which a child has been committed for trial, means any other offence—

(a) that is founded upon facts alleged against the child in proceedings for the firstmentioned offence;

and

(b) that bears a lesser penalty than the firstmentioned offence:.

3. Section 25 of the principal Act is amended by inserting after paragraph (b) the following paragraphs: Amendment of s. 25— Application of this Division.

(ba) any prescribed offence relating to the parking or standing of a vehicle, alleged to have been committed by a child of or above the age of sixteen years;

(bb) any alternative offence to an offence for which a child is already before a court:.

Amendment of
s. 28—
Functions of
screening
panels.

4. Section 28 of the principal Act is amended—

(a) by striking out from subsection (2) the word "A" and substituting the passage "Subject to subsection (2a), a";

and

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

(2a) If a screening panel is of the opinion, after considering the matters referred to in subsection (2), that the child should not be dealt with at all for the alleged offence, it may certify accordingly and may, if it thinks it is appropriate to do so, recommend that the child be cautioned by a member of the police force against committing any further offences.

Amendment of
s. 29—
Where
screening
panel
cannot reach
agreement.

5. Section 29 of the principal Act is amended by striking out the passage "as to whether a child should be dealt with by the Court or a children's aid panel" and substituting the passage "on any matter".

Amendment of
s. 30—
Procedure on
decision by
screening
panel.

6. Section 30 of the principal Act is amended—

(a) by inserting in subsection (1) after the passage "Where a screening panel has certified that" the passage "a child is not to be dealt with at all for an alleged offence, or that";

and

(b) by striking out from subsection (4) the passage "proceed with the prosecution of" and substituting the passage "lay a complaint against".

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

7. Section 44 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) Notwithstanding subsections (1) and (4), a child who has been remanded in custody for trial in a place that is outside the prescribed area may, during the course of the trial and while awaiting sentence, be detained—

(a) in a police prison;

or

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

if it is not reasonably practicable to detain the child during that period in the manner provided by those subsections.

Insertion
of new s. 44a.

8. The following section is inserted in Division III of Part IV of the principal Act after section 44:

Child detained
in police
prison, etc.,
to be
segregated
from adults.

44a. Where a child is being detained in a police prison, police station, watch-house or lock-up pursuant to this Division, the person for the time being in charge of the police prison, police station, watch-house or lock-up shall take such steps as are reasonably practicable to keep the child from coming into contact with any adult person detained in that place.

9. Section 47 of the principal Act is amended by inserting in subsection (5) after the passage "copy of the application" the passage "and, if the Supreme Court Judge so directs, a copy of any statement by a proposed witness".

Amendment of s. 47—
Committal to adult court for trial or sentencing on application of Attorney-General.

10. Section 48 of the principal Act is amended by striking out the passage "The Children's Court" and substituting the passage "Subject to this Act, the Children's Court".

Amendment of s. 48—
Preliminary examination.

11. The following section is inserted after section 48 of the principal Act:

Insertion of new section 48a.

48a. Where a child has been committed to an adult court for trial for an offence (whether before or after the commencement of the Children's Protection and Young Offenders Act Amendment Act, 1982), the following provisions shall apply:

Power of adult court to deal with alternative offences.

- (a) the child may be tried and sentenced, or otherwise dealt with, by the adult court upon information for that offence, or for an alternative offence;
- (b) the child may be sentenced or otherwise dealt with for any offence of which he has lawfully been found guilty by the adult court.

12. Section 56 of the principal Act is repealed and the following section is substituted:

Repeal of s. 56 and substitution of new section.

56. (1) Subject to this Act, where a child is committed to an adult court for trial otherwise than upon his own request, that court may, upon finding the child guilty of an offence—

Sentencing of children tried in adult court.

- (a) deal with the child as if he were an adult;
- (b) make any order in relation to the child that could be made by the Children's Court if it were dealing with the child, or were empowered to deal with the child;

or

- (c) remand the child to the Children's Court for sentencing.

(2) Where a child has been found guilty by an adult court of an alternative offence to the offence for which he was committed for trial, the court is not empowered to deal with the child as if he were an adult.

(3) This section does not apply to a child who has been found guilty of murder.

13. Section 61 of the principal Act is amended—

Amendment of s. 61—
Breach of recognizance.

- (a) by striking out from subsection (1) the passage "the Commissioner of Police" and substituting the passage "a member of the police force of or above the rank of inspector";

- (b) by inserting after subsection (1) the following subsection:

(1a) In any proceedings upon a complaint under this section, a certificate produced by the prosecution purporting to be signed by the Minister, or a member of the police force of or

above the rank of inspector, and stating that he caused the complaint to be laid against the child shall, in the absence of proof to the contrary, be proof of the facts so stated.;

and

(c) by striking out subsections (4) and (5) and substituting the following subsections:

(4) The court—

(a) on the hearing of a complaint laid under subsection (1);

or

(b) on the oral application of the prosecutor in any proceedings before the court for an offence to which the child has pleaded guilty,

upon being satisfied that the child has failed to observe a condition of his recognizance, may make an order for the payment of any amount, or part of any amount, due under the recognizance and—

(c) if the child has not been sentenced for the offence to which the recognizance relates, may make any order in relation to the child that the court had power to make in dealing originally with the child for that offence;

or

(d) if the child has been sentenced to detention for the offence to which the recognizance relates and the sentence has been suspended, shall, subject to subsection (5), forthwith order that the suspension be revoked and the sentence carried into effect.

(5) Where a child is subject to a suspended sentence and the court is satisfied that the failure of the child to observe the conditions of his recognizance is trivial, or that there are proper grounds upon which the failure should be excused, the court—

(a) may refrain from ordering that the sentence be carried into effect;

and

(b) may extend the term of the recognizance by a period not exceeding one year.

(5a) Where a court orders that a suspended sentence be carried into effect, the court—

(a) may, if it considers that there are special circumstances justifying it in so doing, reduce the term of the suspended sentence;

and

(b) may direct that time spent by the child in custody pending determination of the proceedings for breach of recognizance be counted as part of the term of the suspended sentence.

14. Section 64 of the principal Act is amended by inserting in subsection (1) after the passage "grant a child" the passage ", subject to any conditions that the Board thinks proper,".

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

15. Section 91 of the principal Act is amended by inserting after subsection (4) the following subsection:

Amendment of
s. 91—
Court must
explain
proceedings
to child, etc.

(5) Where a child has been sentenced to a fine or ordered to make any other payment of money, the court shall cause the child to be furnished with a notice in writing stating in simple language the amount he must pay and the time and place at which payment is to be, or may be, made.

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

D. B. DUNSTAN, Governor