

CHILD WELFARE (No. 2).

6° Elizabeth II., No. LXXIV.

 No. 74 of 1957.

AN ACT to amend the Child Welfare Act, 1947-1956, and the law relating to Certain Offences Concerning Children and for other purposes.

[Assented to 10th December, 1957.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Child Welfare Act Amendment Act (No. 2), 1957.* Short title.
and citation.

(2) In this Act, the Child Welfare Act, 1947-1956, Act No. 66 of 1947 as reprinted with amendments to and including Act No. 77 of 1956 incorporated pursuant to the provisions of the Amendments Incorporation Act, 1938,

Reprinted
as approved
for reprint
7th May,
1957.

is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Child Welfare Act, 1947-1957.

Commence-
ment.

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

S. 20
amended.

3. Section twenty of the principal Act is amended—

(a) by adding before the word, “against” in line three of paragraph (a), the passage, “, subject to section twenty A of this Act,”; and

(b) by substituting for the passage, “special magistrate may, if he thinks fit, commit for trial or sentence any child” in lines one, two and three of the second proviso to paragraph (a), the passage, “Children’s Court may, subject to section twenty B of this Act, if the Court thinks fit, commit for trial or sentence any person”.

Ss. 20A and
20B added.

4. The principal Act is amended by adding after section twenty the following sections:—

20A. (1) In this section—

“amendment” means the amendment by which the words, “or against” were added after the word, “by” in line three of paragraph (a) of section twenty of this Act by section four of the Child Welfare Act Amendment Act, 1955;

“proclaimed day” means the day fixed by proclamation for the coming into operation of the Child Welfare Act Amendment Act (No. 2), 1957.

(2) The amendment ceases to operate on and from the proclaimed day.

Limitation
of operation
of s. 4
of No. 45
of 1955.

(3) Where prior to the proclaimed day a Children's Court in exercise of the jurisdiction conferred by the amendment has finalised any proceedings neither the conduct of the proceedings, the decision of the Court on the proceedings, nor the exercise by the Court of any authority conferred on the Court in, or in connection with, the proceedings, is affected by the provisions of subsection (2) of this section.

(4) The provisions of subsection (2) of this section do not affect the exercise of any jurisdiction or power conferred on Children's Courts, otherwise than by the amendment, and in particular those provisions

(a) do not affect the jurisdiction or any power conferred by this Act on Children's Courts in respect of any act or omission of a person who is not a child if the act or omission is punishable by a Children's Court,

(i) on complaint mentioned in paragraph (b) of section twenty of this Act;

Cf. ss. 60-62, 64, 76, 77, 105, 107-109, 111, 113-120, 124-128, 130, 132-134, 137, 138, 142, 143, 146A and 146B of this Act, and Reg. 43 Gazette of 28/9/1934, p. 1485.

(ii) on complaint mentioned in paragraph (c) of section twenty of this Act; or

Cf. No. 33 of 1928, ss. 13, 16, 17, 18 and 20, as amended.

(iii) on complaint as an offence under any rules made whether before or after the proclaimed day pursuant to subsection (2) of section eight of the Guardianship of Infants Act, 1926, which Act is mentioned in paragraph (d) of section twenty of this Act, or on complaint as an offence under subsection (5) of section eight of that Act, or under section nine of that Act;

Cf. s. 20 (d) of this Act, and s. 8 (2) and (5), and s. 9 of No. 23 of 1926.

- (b) do not affect the jurisdiction or any power conferred on Children's Courts by section twenty B of this Act; and
- (c) do not affect the jurisdiction or any power conferred on Children's Courts by the first proviso to paragraph (a) of section twenty of this Act.

(5) The provisions of subsection (2) of this section do not affect any right to bring an appeal, or the jurisdiction of any Court to hear and determine any appeal brought, in respect of a decision made, whether before or after the proclaimed day, by a Children's Court.

20B. (1) In this section—

Offences against or in respect of children may be dealt with summarily. Cf. Code ss. 181 (1), 182, 183, 185, 187, 189, 190 and 328.

“Code” means the Criminal Code which is set forth in the Schedule to the Criminal Code Act, 1913 which in turn is set forth in Appendix B to the Criminal Code Act Compilation Act, 1913, being Act No. 28 of 1913 which is reprinted with amendments to and including Act No. 73 of 1954 incorporated pursuant to the provisions of the Amendments Incorporation Act, 1938, and which is further amended by Acts Nos. 11, 43 and 74 of 1956.

(2) Notwithstanding any provision of the Code, where, after the proclaimed day as defined in section twenty A of this Act, a person is charged under the Code with any of the following indictable offences—

- (a) unlawfully and indecently dealing with a boy under the age of fourteen years;
- (b) having or attempting to have unlawful carnal knowledge of a girl under the age of thirteen years;

- (c) having or attempting to have carnal knowledge of a person against the order of nature;
- (d) having or attempting to have unlawful carnal knowledge of a girl under the age of sixteen years;
- (e) unlawfully and indecently dealing with a girl who is—
 - (i) under the age of sixteen years;
 - (ii) to the knowledge of the accused person an idiot or imbecile; or
 - (iii) under the age of seventeen years and of whom the accused person is the guardian, teacher or school teacher;
- (f) being the guardian, employer, teacher or schoolmaster of a girl under the age of seventeen years, unlawfully and carnally knows or attempts to have unlawful and carnal knowledge of the girl; or
- (g) unlawfully and indecently assaulting a girl under the age of sixteen years;

if the offence is alleged to have been committed, or, as the case may be, attempted, either before or after that day, by a person who had attained the age of eighteen years at the time the offence is alleged to have been committed or attempted, and if that offence is alleged to have been committed or attempted against or in respect of a boy or girl who at the time the offence is alleged to have been committed or attempted was under eighteen years of age, the person so charged may, subject to the provisions of this section, be tried in a summary manner by a Children's Court constituted by a special magistrate who is also appointed or deemed to have been appointed a stipendiary magistrate under the Stipendiary Magistrates Act, 1957, who may, subject to this section, hear the complaint for the offence.

(3) The offender is liable on summary conviction to imprisonment with hard labour for a term not exceeding eighteen months.

(4) (a) Before the person so charged is asked to show cause why he should not be convicted, the magistrate is required to explain to him that he is entitled to be tried by a jury, and is not obliged to make any defence before him, and to ask him whether he objects to the charge being dealt with summarily.

(b) If the person so charged does not object to the magistrate dealing with the charge summarily, the magistrate is required to reduce the charge to writing and to read it to the person, and then to ask him whether he is guilty or not guilty of the offence, and if he says that he is guilty, the magistrate is to convict him of the offence, but if he says that he is not guilty the magistrate is required to hear his defence, and then deal with the charge summarily.

(c) If the person so charged does not object to the magistrate dealing with the charge summarily and is summarily convicted but the magistrate hearing the charge is of opinion that for any reason the sentence or order which he is empowered by subsection (2) of this section to pass on the person convicted by him is inadequate, he may, in lieu of passing sentence, commit the convicted person for sentence before the Supreme Court, which may pass such sentence for the offence as might have been passed if the offender had been convicted on indictment.

(d) If

- (i) the person so charged objects to the magistrate dealing with the charge; or
- (ii) the magistrate is of the opinion that he has not jurisdiction to deal summarily with the offence,

the magistrate is required to abstain from doing so, but the magistrate may exercise any of the powers and any jurisdiction conferred on Justices by the Justices Act, 1902, in respect of indictable offences.

(5) Where under the provisions of Chapter LXIII of the Code a person charged upon an indictment with an offence may be convicted of an offence other than that with which he is charged, and may be punished, he may be so convicted and punished notwithstanding anything contained in this section.

Conviction
of offence
other than
that charged.
Code
Chap. LXIII.

(6) The provisions of Chapter LXIII of the Code relating to convictions of persons on indictment of offences other than those with which they are charged apply to convictions of offenders on complaints preferred against them of offences upon their trial in order to their summary conviction by a Children's Court.

Summary
convictions.
Cf. Code
s. 593.

5. Section fifty-four of the principal Act is amended by substituting for the words, "the Commonwealth" in line four, the indefinite article, "a".

S. 54
amended.

