Western Australia

# Children's Court of Western Australia Act 1988

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# Children's Court of Western Australia Act 1988

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Western Australia

# Children's Court of Western Australia Act 1988

**An Act to establish the Children's Court of Western Australia and for related purposes.**

# Part 1 — Preliminary

## 1. Short title

This Act may be cited as the *Children's Court of Western Australia Act 1988*.

*[Section 1 amended: No. 15 of 1991 s. 4.]*

## 2. Commencement

This Act shall come into operation on such day as is or such days as are respectively fixed by proclamation.

## 3. Terms used

(1) In this Act, unless the contrary intention appears —

***CEO (young offenders)*** means the chief executive officer of the young offenders agency;

***Chief Magistrate*** means the Chief Magistrate of the Magistrates Court;

***child*** means —

(a) any boy or girl under the age of 18 years; and

(b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years; and

(c) a person dealt with under section 19(2), (2AA) or (2AB); and

(d) a boy or girl dealt with under section 20(3)(b);

***Court*** means the Children's Court of Western Australia established under this Act;

***judge*** means a judge of the Court or an acting judge of the Court and includes a judge of the Supreme Court or a District Court judge when performing a function of the Court under section 6(3);

***magistrate*** means a magistrate of the Court;

***President*** means the judge who is appointed under section 7 to be the President of the Court;

***registrar***, in relation to the Court sitting at a place, means the person appointed under this Act to be the registrar of the Court at that place;

***young offenders agency*** means the Public Sector agency principally assisting the Minister administering the *Young Offenders Act 1994* in its administration.

(2) For the purposes of this Act, ***legal experience*** is —

(a) standing and practice as a legal practitioner; or

*[(b) deleted]*

(c) judicial service (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or

(d) a combination of both kinds of legal experience defined in this subsection.

*[Section 3 amended: No. 15 of 1991 s. 5; No. 14 of 1992 s. 4(3); No. 31 of 1993 s. 27; No. 65 of 2003 s. 107(2), (3); No. 74 of 2003 s. 35; No. 34 of 2004 s. 251; No. 45 of 2004 s. 29; No. 59 of 2004 s. 60 and 73; No. 65 of 2006 s. 55; No. 21 of 2008 s. 643(2)-(4); No. 59 of 2010 s. 42; No. 47 of 2020 s. 6; No. 2 of 2022 s. 4; No. 9 of 2022 s. 424.]*

## 4. Application of certain Acts

(1) The following provisions of the *Magistrates Court Act 2004* apply to and in relation to the Court and its officers in the same way as they apply to and in relation to the Magistrates Court and its officers —

(a) Part 3 Division 2;

(b) sections 35 and 36.

(2) The *Criminal Procedure Act 2004* applies to and in respect of proceedings before the Court as a court of summary jurisdiction unless this Act provides otherwise.

*[Section 4 inserted: No. 59 of 2004 s. 61; amended: No. 84 of 2004 s. 18.]*

### 5A. *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies to this Act.

*[Section 5A inserted: No. 20 of 2013 s. 33.]*

# Part 2 — Children's Court of Western Australia

## Division 1 — Establishment and constitution

### 5. Establishment of Court

(1) A court to be known as the Children's Court of Western Australia is established.

(2) The Court shall be constituted in the manner provided by this Act.

(3) The Court is a court of record and shall have an official seal of which judicial notice shall be taken.

### 6. Constitution of Court

(1) The Court shall be constituted by —

(a) a judge; or

(b) a magistrate; or

(c) not less than 2 JPs.

(2) Notwithstanding subsection (1) —

(a) the Court may be constituted by a judge or a magistrate sitting with one or more JPs;

(b) the Court may be constituted by one JP for the purposes of and incidental to the adjournment of proceedings in circumstances where practical considerations do not permit the Court to be constituted in accordance with subsection (1).

(3) Upon the request of the President and with the approval of the Chief Justice of Western Australia or the Chief Judge of the District Court, as the case may require, a judge of the Supreme Court or a District Court judge may sit as a judge of the Court and perform any of the functions of a judge accordingly.

(4) Where the Court is constituted so as to include a judge or magistrate, the judge or magistrate shall determine any questions of law that arise.

(5) Subject to subsection (4), where the persons constituting the Court are divided in opinion as to the decision to be given on any question —

(a) the opinion of a judge or magistrate, if sitting, shall prevail; or

(b) if no judge or magistrate is sitting and 2 JPs constitute the Court, the proceeding shall be re-heard and determined before a judge or magistrate in accordance with the directions of the President, given either generally or in relation to a specific case; or

(c) if no judge or magistrate is sitting and more than 2 JPs constitute the Court, the opinion of the majority, if there is a majority, shall prevail and if there is not a majority, the proceeding shall be re-heard and determined before a judge or magistrate in accordance with the directions of the President, given either generally or in relation to a specific case.

*[Section 6 amended: No. 59 of 2004 s. 73.]*

## 6A. Protection of judicial officers

(1) A judge or a magistrate has, in the performance of his or her functions as a judge or a magistrate, the same protection and immunity as a judge of the Supreme Court has in the performance of his or her duties as a judge.

(2) A JP has, in the performance of his or her functions when constituting the Court, the same protection and immunity as a judge of the Supreme Court has in the performance of his or her duties as a judge.

*[Section 6A inserted: No. 59 of 2004 s. 62.]*

## Division 2 — Judges and magistrates

*[Heading inserted: No. 2 of 2022 s. 5.]*

### 7. Appointment, terms, conditions etc. of judges

(1) A judge, or more than one judge, shall be appointed by the Governor by commission under his hand on the recommendation of the Attorney General made after consultation with the Minister responsible for the administration of the *Children and Community Services Act 2004*.

(2) A person is not eligible for appointment as a judge unless that person is a lawyer and has had not less than 8 years' legal experience.

(3) A judge is entitled to like salary, allowances and reimbursements, leave of absence, and pension rights, to those to which a District Court judge is entitled in relation to his office.

(4) If a person is a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* [1] at the time he is appointed a judge, section 15 of the *District Court of Western Australia Act 1969* shall apply to and in relation to him as if he had been appointed a District Court judge.

(5) A judge, in relation to that office, is entitled to the style and title of "His Honour" or "Her Honour".

(6) A person who has attained the age of 70 years is ineligible for appointment as a judge and a judge shall retire from office on attaining the age of 70 years.

(7) A judge may at any time, by written notice addressed to the Governor, resign his or her office.

(8) The judge, or if more than one judge is appointed one of the judges designated by the Governor, shall be the President of the Court.

(9) A judge may contemporaneously hold a commission as a District Court judge or hold some other judicial office in Western Australia, but may not practise as a legal practitioner or be directly or indirectly concerned in such practice.

*[Section 7 amended: No. 31 of 1993 s. 28; No. 65 of 2003 s. 107(4); No. 34 of 2004 s. 251; No. 59 of 2004 s. 73; No. 21 of 2008 s. 643(5); No. 9 of 2022 s. 424.]*

## 8. Tenure of office

A judge is entitled to hold office during good behaviour but the Governor may, upon the address of both Houses of Parliament, remove a judge from office.

## 8A. Absence etc. of President

(1) Where —

(a) the President is absent from duty for any reason; or

(b) the President declines to deal with any matter; or

(c) no judge has been designated to be the President,

the senior judge (determined by reference to the date of appointment as a judge of the Court) present and able to act has the functions of the President.

(2) Upon the request of the President a judge may perform any of the functions of the President.

*[Section 8A inserted: No. 15 of 1991 s. 7.]*

## 9. Acting judge

(1) Where —

(a) a judge is or is expected to be absent from duty for any reason; or

(b) a judge declines to deal with any matter; or

(c) an office of judge is vacant; or

(d) for any reason the conduct of the business of the Court, in the opinion of the Governor, requires such an appointment to be made,

the Governor, on the recommendation of the Attorney General, may appoint a person qualified to be a judge to be an acting judge, to perform the functions of the judge when the judge is so absent or so declines or the office is vacant or in the circumstances referred to in paragraph (d).

(2) Subject to subsection (4), an acting judge has the same functions, rights and immunities and is subject to the same rules and conditions as a judge would have or would be subject to in performing those functions.

(3) An appointment as acting judge and any act, matter or thing done in performing functions as provided by subsection (1) shall not be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

(4) An acting judge is entitled to such remuneration, allowances, and leave of absence as is determined by the Governor.

(5) An acting judge may be designated by the Governor as President of the Court.

**10. Appointment of magistrates**

(1) The Governor may appoint a person who is qualified to be appointed as a magistrate of the Magistrates Court as a magistrate of the Children's Court.

(2) The appointment of a magistrate of the Children's Court is to be by a commission under the Public Seal of the State.

(3) The Governor may appoint as many magistrates as are needed to deal with the workload of the Court.

(4) A magistrate of the Magistrates Court may be appointed to be contemporaneously a magistrate of the Children's Court.

(5) Section 6(3), (4) and (5) of, and clauses 5, 9 (except clause 9(9)) and 11 to 16 of Schedule 1 to, the *Magistrates Court Act 2004*, with any necessary changes, apply as if —

(a) each reference in those provisions (other than in Schedule 1 clause 12(6) and (7) of that Act) to "the Court" were a reference to "the Children's Court"; and

(b) each reference in those provisions (other than in Schedule 1 clause 12(6) and (7) of that Act) to "magistrate" were a reference to "magistrate of the Children's Court"; and

(c) the reference in section 6(5) of that Act to section 37 of that Act were a reference to section 6A of this Act; and

(d) the reference in Schedule 1 clause 14(1)(c) of that Act to section 25(3) of that Act included a reference to section 12A(4) of this Act; and

(e) the reference in Schedule 1 clause 14(2)(b) of that Act to consulting the Chief Magistrate were a reference to consulting the Chief Magistrate and the President.

*[Section 10 inserted: No. 59 of 2004 s. 63; amended: No. 7 of 2008 s. 149; No. 2 of 2022 s. 6.]*

*[Section 10. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]*

## 11. Work of magistrates appointed to both Magistrates Court and Children's Court

(1) In this section —

***Children's Court functions*** means functions of a magistrate of the Court;

***dually appointed magistrate*** means a person who holds office both as a magistrate of the Magistrates Court and as a magistrate of the Court.

(2) The President may, by written notice, inform the Chief Magistrate that the President considers that, to deal with the workload of the Court, it is necessary or desirable for a particular dually appointed magistrate for the time being to perform Children's Court functions —

(a) on a full-time basis; or

(b) on a part-time basis as specified in the notice.

(3) If the President gives a notice under subsection (2) in relation to a dually appointed magistrate —

(a) the Chief Magistrate may consent, or refuse to consent, to the magistrate for the time being performing Children's Court functions on the basis specified in the notice; and

(b) if the Chief Magistrate consents — the Chief Magistrate must, in giving any directions to the magistrate under the *Magistrates Court Act 2004* section 25, take into account that for the time being the magistrate is required to perform Children's Court functions on the basis specified in the notice.

(4) If a particular dually appointed magistrate has performed Children's Court functions on a full-time or part-time basis or has been the subject of a notice under subsection (2), the President may, by written notice, inform the Chief Magistrate —

(a) that the President considers that, to deal with the workload of the Court, it is not necessary or desirable for the magistrate for the time being to perform Children's Court functions at all; or

(b) that the President considers that, to deal with the workload of the Court —

(i) it is not necessary or desirable for the magistrate for the time being to perform Children's Court functions on the basis that previously applied; and

(ii) it is necessary or desirable that the magistrate should instead for the time being perform Children's Court functions on a part-time basis as specified in the notice (which must, in the case of a magistrate who previously performed those functions on a part-time basis or was the subject of a notice under subsection (2)(b), be a reduced part-time basis).

(5) If the President gives a notice under subsection (4) in relation to a dually appointed magistrate, the Chief Magistrate must, in giving directions to the magistrate under the *Magistrates Court Act 2004* section 25, take into account —

(a) in the case of a notice under subsection (4)(a) — that for the time being the magistrate is not required to perform Children's Court functions; or

(b) in the case of a notice under subsection (4)(b) — that for the time being the magistrate is required to perform Children's Court functions on the specified part-time basis and not otherwise.

(6) In determining whether to give a notice under subsection (2) or (4) in relation to a dually appointed magistrate, the President has absolute discretion and is not required to take into account the seniority or length of service of the magistrate or any other matter.

(7) A notice under this section in relation to a magistrate is subject to any subsequent notice under this section in relation to the magistrate.

*[Section 11 inserted: No. 2 of 2022 s. 7.]*

## 12. Oath or affirmation of office

(1) Before a person who is appointed to be a judge, or a magistrate, of the Court performs any function of the office, he or she shall take before the Governor, a Supreme Court judge, or some person authorised for the purpose by the Governor, an oath or affirmation in the form set out in Schedule 1.

(1a) Subsection (1) does not apply to —

(a) a judge of another court of the State who has taken an oath or affirmation of office in respect of that office of judge; or

(b) a magistrate who has taken the oath or affirmation under clause 4 of Schedule 1 to the *Magistrates Court Act 2004*.

(2) An oath or affirmation referred to in subsection (1) may be taken at a place outside the State.

*[Section 12 amended: No. 15 of 1991 s. 9; No. 59 of 2004 s. 65 and 73; No. 24 of 2005 s. 14; No. 7 of 2008 s. 150.]*

*[Section 12. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]*

## 12A. President may assign duties to magistrates

(1) The President, by directions given from time to time to a person who is a magistrate, may —

(a) specify which case or cases, or class or classes of case, the person is to deal with; and

(b) specify which administrative duties the person is to perform for the time being; and

(c) specify where, when and at what times to deal with those cases or perform those duties.

(2) A direction given under subsection (1) must relate only to the person's functions as a magistrate of the Court.

(3) A direction given to a magistrate under subsection (1) does not limit the functions of the magistrate.

(4) A magistrate must comply with a direction given under subsection (1).

(5) A contravention of subsection (4) is not an offence.

(6) The Chief Magistrate is not entitled, under the *Magistrates Court Act 2004* or any other law, to direct a person to perform functions as a magistrate of the Court or in relation to the performance of those functions.

*[Section 12A inserted: No. 2 of 2022 s. 8.]*

## Division 3 — Sittings of the Court

### 13. Where and when Court operates

(1) The Court —

(a) is to have registries at such places, including places outside the State, as the Minister, by written notice to the President, decides from time to time; and

(b) is to sit at places where it has a registry at such times as the President decides from time to time; and

(c) may, despite paragraphs (a) and (b), sit or otherwise exercise its jurisdiction at any time and place, but must not do so at a place outside the State without the approval of the President.

(2) However, subsection (1) does not authorise the Court to have a registry, to sit, or to otherwise exercise its jurisdiction, at a place

outside the State except to the extent allowed by the law of the jurisdiction in which the place is located.

(3) Public notice of decisions made under subsection (1)(a) and (b) is to be given in such manner as the President decides.

*[(4) deleted]*

(5) The President may direct a judge, magistrate or JP to sit at any place where the Court has a registry and may direct concurrent sittings of the Court at the same place for the prompt disposal of the Court's functions.

*[Section 13 inserted: No. 59 of 2004 s. 66; amended: No. 7 of 2008 s. 151.]*

## 14. Power to sit in chambers

A judge or magistrate or JPs may sit in chambers at any time and at any place and, subject to the rules of court, may exercise in chambers any jurisdiction of the Court except any hearing with respect to a child accused of an offence or the determination of an application to declare a child in need of care and protection.

*[Section 14 amended: No. 59 of 2004 s. 73.]*

## 15. Police officers to attend Court

A member of the Police Force of the State must when required by the Court attend the Court when it is sitting and shall obey, serve or execute any summons, warrant, order and command of the Court, or a judge, magistrate or JPs of the Court.

*[Section 15 amended: No. 59 of 2004 s. 73.]*

## Division 4 — Officers of the Court

### 16. Appointment of registrars etc.

(1) The Minister shall appoint, for each registry of the Court, a registrar and such deputy registrars and other officers as may be needed to deal with the workload of the Court.

(2) A person appointed to be a registrar of the Magistrates Court is to be taken to also have been appointed as a registrar of the Children's Court and vice versa.

(3) A person appointed to be a deputy registrar of the Magistrates Court is to be taken to also have been appointed as a deputy registrar of the Children's Court and vice versa.

(4) Section 26(7) to (8b) of the *Magistrates Court Act 2004* applies as if —

(a) each reference to the Magistrates Court were a reference to the Court; and

(b) each reference to a Registrar or Deputy Registrar of the Magistrates Court were a reference to a registrar or deputy registrar (as the case requires) of the Court; and

(c) each reference in subsection (8) to a person appointed to an office in the administrative staff of the Magistrates Court were a reference to a person appointed as a registrar, deputy registrar or other officer appointed under section 16(1) to deal with the workload of the Court; and

(d) the reference in subsection (8b) to section 26(7)(a) or (b) of that Act were a reference to that provision as applied by this subsection.

*[Section 16 inserted: No. 59 of 2004 s. 67; amended: No. 7 of 2008 s. 152.]*

## 17. Duties of registrar

(1) The registrar of the Court at each place at which the Court is held shall —

(a) issue summonses issued out of the Court at that place; and

(b) maintain a record of all proceedings, verdicts and judgments of the Court at that place; and

(c) make lists of all matters for hearing, trial, further hearing or rehearing by the Court at that place; and

(d) discharge all other duties and powers imposed or conferred under this Act and keep an account of all proceedings of the Court at that place; and

(e) take charge of and keep an account of all court fees and fines payable or paid into the Court at that place and of all moneys paid into and out of the Court at that place; and

(f) account for all such fees and fines and shall, when required, submit his accounts to be audited by the Auditor General appointed under the *Auditor General Act 2006*; and

(g) give effect to all lawful instructions of the President and do and perform all other acts and duties properly incidental to the office of registrar.

(2) Any entry in the register or any book of the Court held at any place or a copy thereof, bearing the seal of the Court and signed and certified as a true copy by the registrar of the Court at that place, shall be admitted in all courts and by persons acting judicially as evidence of that entry and of the proceedings referred to by that entry and of the regularity of the proceedings, without further proof and no record of any summons, judgment or order other than the entry is necessary.

*[Section 17 amended: No. 59 of 2004 s. 73; No. 77 of 2006 Sch. 1 cl. 24.]*

### 18. Power of registrars to administer oaths etc.

(1) Every registrar of the Court may take and administer affidavits, depositions, declarations, oaths and affirmations in relation to any proceedings in the Court.

*[(2) deleted]*

*[Section 18 amended: No. 59 of 2004 s. 73; No. 24 of 2005 s. 15.]*

# Part 3 — Jurisdiction of the Court

## 19. Criminal jurisdiction as regards children

(1) The Court has exclusive jurisdiction to hear and determine a charge of an offence alleged to have been committed by a child.

(1a) Subsection (1) is subject to this Part and these enactments —

(a) the *Young Offenders Act 1994* Part 5 Division 2;

(b) the *Sentencing Act 1995* sections 78, 84D, 128 and 132.

(2) Notwithstanding that a person has attained the age of 18 years, the jurisdiction of the Court extends, and the provisions of this Act apply, to proceedings in respect of an offence committed, or allegedly committed, by the person before attaining the age of 18 years.

(2AA) Despite any uncertainty as to the age of the person charged at the time the offence is alleged to have been committed, the Court has jurisdiction for the purposes of subsection (1) if the charge alleges that the offence was committed by a person who might have been a child.

(2AB) The Court retains the jurisdiction referred to in subsection (2AA) despite any evidence produced in proceedings in respect of the offence that the person had reached 18 years of age at the time the offence is alleged to have been committed.

(2a) In subsection (2) and (2AB), the reference to proceedings in respect of an offence includes proceedings relating to an order that the Court made when it dealt with the offender upon finding the offender guilty of the offence.

(3) In exercising the jurisdiction conferred by this section, the Court when constituted so as not to consist of or include a judge is a court of summary jurisdiction, subject to section 19B(4)(d).

(4) Where it is provided by any other written law that a person instead of being prosecuted for a simple offence in a court may elect to suffer a prescribed monetary penalty in respect of that

offence, then, notwithstanding anything in this Act, a child may so elect.

*[(5)-(8) deleted]*

(9) Where a child is before the Supreme Court or the District Court, that court has all the powers of the Children's Court of Western Australia in all respects as if the child had been before that Court.

*[Section 19 amended: No. 15 of 1991 s. 10; No. 104 of 1994 s. 224; No. 78 of 1995 s. 12; No. 27 of 2004 s. 14(3); No. 59 of 2004 s. 68 and 73; No. 84 of 2004 s. 80; No. 47 of 2020 s. 7.]*

### 19A. Application of sections 19B to 19E

Where a child is charged with an indictable offence, sections 19B to 19E apply and references in those sections to a child are, unless the contrary intention appears, to be taken as including a person who is charged with an indictable offence that is alleged to have been committed when that person was a child.

*[Section 19A inserted: No. 15 of 1991 s. 11.]*

### 19B. Jurisdiction and procedure for charges of indictable offences

(1) If a child is charged with an indictable offence and —

(a) the offence is such that, if an adult were charged with it, it must be tried on indictment; or

(b) the circumstances of the alleged offence are such that —

(i) if an adult were charged with it, it could, by virtue of section 5 of *The Criminal Code*, or another written law, be tried either on indictment or summarily; and

(ii) the Court, having complied with section 40(2) of the *Criminal Procedure Act 2004*, decides that it is to be tried on indictment,

the child may elect to be tried on indictment by the Supreme Court or the District Court (as the case requires), and the Court shall so inform the child.

(2) If a child is charged with an indictable offence and the circumstances of the alleged offence are such that the child is not entitled to make an election under subsection (1), the Court shall, subject to the provisions referred to in section 19(1), hear and determine the charge summarily.

(3) If the child makes an election under subsection (1) the Court shall proceed under Part 3 Division 4 of the *Criminal Procedure Act 2004* as if the charge were one that must be tried on indictment.

(4) If a child does not make an election under subsection (1) —

(a) the Court, on its own motion or on the application of the child, may direct the prosecutor —

(i) to serve or cause to be served on the child (or the child's solicitor or counsel) and to lodge with the Court, within such time as is specified, any document that is required to be disclosed under section 95 of the *Criminal Procedure Act 2004*; and

(ii) to afford the child (or the child's solicitor or counsel) reasonable opportunity to inspect any material exhibits that the prosecution proposes to tender at the hearing of the charge;

and

(b) on the making of a direction under paragraph (a), the State acting by the Attorney General or some other duly appointed person shall assume the conduct of the prosecution and shall be taken to be the prosecutor; and

(c) the Court shall, subject to the provisions referred to in section 19(1), hear and determine the charge, and may exercise any power in Part 4 or 5 of the *Criminal Procedure Act 2004*, as if the prosecution notice were an indictment, and the hearing were a trial on indictment and the *Criminal Procedure Act 2004* shall apply with such modifications as circumstances require; but the child is not thereby entitled to have any issue tried by a jury; and

(d) subject to Part 5, the child, if convicted, shall, for the purposes of punishment and orders, procedures, and proceedings consequential on conviction, be taken to have been convicted on indictment, notwithstanding that the child may have been convicted by the Court when constituted other than by a judge.

(5) If a copy of a statement of a person is served in accordance with a direction made under subsection (4)(a)(i), the original of the statement may be produced and given in evidence at the trial of the child —

(a) if it is proved to the satisfaction of the Court that the person is dead, or out of Western Australia, or so ill as not to be able to travel, although there may be a prospect of the person's recovery; or

(b) if the person is kept out of the way by the child.

(6) If there is a prospect of the recovery of a person proved to be too ill to travel, the Court shall not be obliged to receive the statement, but may postpone the trial.

*[Section 19B inserted: No. 15 of 1991 s. 11; amended: No. 71 of 2000 s. 40; No. 65 of 2003 s. 122(2); No. 4 of 2004 s. 58; No. 59 of 2004 s. 69 and 73; No. 84 of 2004 s. 13, 18 and 80.]*

### 19C. Court may transfer charge to Magistrates Court where child and adult charged with same offence

(1) Notwithstanding section 19B, if —

(a) the Court is satisfied —

(i) that a person who has reached 18 years of age (the ***adult***) is charged with the same indictable offence as a child or with an indictable offence arising from the same acts, omissions, or circumstances as are alleged against a child charged with an indictable offence; and

(ii) that the adult is to be tried on indictment for the offence;

and

(b) the Court is for any reason of the opinion that it is appropriate that the child be dealt with on indictment jointly with the adult,

then the Court shall proceed under Part 3 Division 4 of the *Criminal Procedure Act 2004* as if the charge were one that must be tried on indictment.

*[(2) deleted]*

(3) Where a child is committed for trial on indictment under subsection (1) and it becomes inexpedient or undesirable to conduct the trial of the adult jointly with that of the child, the court to which the child has been committed for trial may —

(a) nevertheless try the child; or

(b) on the application of the child, order the transfer of the prosecution notice on which the child was committed to the Court to be heard and determined in accordance with section 19B(2) or (4).

(4) For the purposes of subsection (1), the Court may adjourn the hearing of the charge of the indictable offence until proceedings

against the adult are at a stage where the Court can be satisfied about any of the matters in that subsection.

*[Section 19C inserted: No. 15 of 1991 s. 11; amended: No. 27 of 2002 s. 23; No. 4 of 2004 s. 58; No. 59 of 2004 s. 73; No. 84 of 2004 s. 18 and 80.]*

### 19D. Court may transfer charge to Magistrates Court where accused has turned 18

Notwithstanding section 19B, where a person who is charged with an indictable offence that is alleged to have been committed when the person was under the age of 18 years has attained the age of 18 years, the Court, instead of hearing and determining the charge of the offence, may, having regard to —

(a) the seriousness of the offence; or

(b) the existence of an adult co-offender; or

(c) the effluxion of time since the offence; or

(d) the fact that the person is charged before the Magistrates Court with other offences; or

(e) any other good cause,

order the transfer of the prosecution notice to the Magistrates Court to be dealt with according to law and the Magistrates Court shall have jurisdiction accordingly.

*[Section 19D inserted: No. 15 of 1991 s. 11; amended: No. 59 of 2004 s. 73; No. 84 of 2004 s. 80.]*

### 19E. Procedure for charges of Commonwealth indictable offences

Where a child is charged with an indictable offence against a law of the Commonwealth and the Court makes a direction under section 19B(4)(a), the Commonwealth acting by the Attorney General, the Director of Public Prosecutions, or some

other appropriate official, may assume the conduct of the prosecution and shall then be taken to be the prosecutor.

*[Section 19E inserted: No. 15 of 1991 s. 11; amended: No. 65 of 2003 s. 122(3); No. 84 of 2004 s. 80.]*

### 19F. Rules

Without limiting the generality of section 38, rules made in accordance with that section may provide for matters in addition to the matters provided for in sections 19B to 19D.

*[Section 19F inserted: No. 15 of 1991 s. 11.]*

### 20. Non-criminal jurisdiction as regards children

(1) Subject to this Act, the Court has exclusive jurisdiction to hear and determine all applications made with respect to a child —

(a) under the *Children and Community Services Act 2004*; and

(b) under section 29 or 38(1) of the *School Education Act 1999*.

*[(c)-(e) deleted]*

(2A) Subject to this Act and the *Restraining Orders Act 1997* section 52, the Court has jurisdiction to hear and determine all applications made to the Court with respect to a child under the *Restraining Orders Act 1997*.

(2) Section 172 of the *Criminal Procedure Act 2004*, with any necessary changes, applies in respect of the Court when it is exercising jurisdiction under subsections (1) and (2A).

(3) Subject to this Act, the Court has exclusive jurisdiction to hear PBO proceedings under the *Prohibited Behaviour Orders Act 2010* relating to —

(a) a person who is under 18 years of age; or

(b) a person who has reached 18 years of age but who committed the relevant offence referred to in the *Prohibited Behaviour Orders Act 2010* section 8(2)(a)(ii) while he or she was under 18 years of age.

*[Section 20 amended: No. 19 of 1997 s. 81; No. 15 of 1998 s. 9; No. 36 of 1999 s. 247; No. 34 of 2004 s. 251; No. 84 of 2004 s. 14 and 80; No. 14 of 2008 s. 43(2); No. 59 of 2010 s. 43; No. 14 of 2013 s. 7; No. 23 of 2015 s. 14; No. 19 of 2016 s. 101; No. 20 of 2023 s. 18.]*

## 21. Limitations on exercise of certain jurisdiction

(1) In this section —

***detention*** has the meaning given to that term by section 3 of the *Young Offenders Act 1994*.

(2) The Court when constituted by or so as to include a magistrate cannot —

(a) sentence an offender to a term of detention longer than 12 months; or

(b) sentence an offender who at the time of being sentenced is under 18 years of age to a term of imprisonment longer than 3 months; or

(c) sentence an offender who at the time of being sentenced has reached 18 years of age to a term of imprisonment longer than 6 months,

for one offence, or as the aggregate of the sentences imposed on the one occasion for more than one offence.

*[(3) deleted]*

(4) When constituted by JPs only, the Court may not —

(a) sentence a child to detention or to be imprisoned; or

(b) make an order declaring a child to be in need of care and protection; or

(c) exercise jurisdiction under the *Criminal Law (Mental Impairment) Act 2023*.

(4A) If the question of whether the accused is unfit to stand trial is raised during criminal proceedings before the Court when constituted by JPs only, the Court must refer the question to the Court constituted by a judge or magistrate.

(4B) Subsection (4A) has effect subject to the *Criminal Law (Mental Impairment) Act 2023* section 31.

(5) When the Court constituted by or so as to include a magistrate finds a child guilty of an offence and convicts the child but considers that it does not have sufficient power to sentence or otherwise deal with the child adequately, it may refer the child to be sentenced or otherwise dealt with for the offence by the Court constituted by or so as to include a judge.

(6) When the Court constituted by JPs only finds a child guilty of an offence and convicts the child but considers that it does not have sufficient power to sentence or otherwise deal with the child adequately, it may refer the child to be sentenced or otherwise dealt with by the Court constituted by or so as to include a judge or magistrate.

*[Section 21 amended: No. 78 of 1995 s. 12; No. 59 of 2004 s. 73; No. 5 of 2008 s. 4; No. 10 of 2023 s. 283.]*

## 22. President may extend powers of magistrate

(1) Where under this Act the Court has jurisdiction to hear and determine a charge of an offence, the President may, by notice in writing given to a magistrate, direct and empower the magistrate to hear and determine the charge under this section.

(2) A magistrate who is directed to hear and determine a particular charge of an offence under this section shall, notwithstanding

section 21(2), in respect of that charge have extended powers of sentencing as if that magistrate were a judge.

(3) In the case of a charge which is to be heard and determined by a magistrate under this section, the magistrate must when the trial begins inform the person charged of the extended powers conferred on the magistrate under this section.

(4) This section does not apply in respect of an offence of a kind that can be determined only by the Supreme Court where the person charged with the offence is not a child.

*[Section 22 amended: No. 84 of 2004 s. 80.]*

### 23. Court may require attendance of parent or guardian

(1a) This section applies to proceedings other than those to which section 45 of the *Young Offenders Act 1994* applies.

(1) In any proceedings in respect of or affecting a child, the Court shall inquire in to the reason if no parent or guardian of the child is present and, unless the Court considers that —

(a) there is a valid reason to excuse attendance; or

(b) it is not reasonable to delay proceedings for the attendance of a parent or guardian,

the Court shall, by order served on a parent or guardian of the child, or any one or more of such persons, require such parent or guardian to attend during all stages of the proceedings, whether or not from time to time adjourned, unless subsequently excused from further attendance by the Court.

(2) A person who fails without reasonable excuse to comply with the requirements of an order served on the person under subsection (1) commits an offence.

Penalty: $500.

(3) The Court may, if it considers it expedient and just to do so, proceed with the hearing and determination of any proceedings notwithstanding the absence of any parent or guardian.

(4) If the Court proceeds with the hearing and determination of proceedings in the absence of any parent or guardian, the Court shall do what it reasonably can to ensure that the parents or guardians of the child are notified in writing —

(a) of any charge laid against the child alleging the commission of an offence;

(b) of any finding, order or decision made by the Court in the determination of the proceedings;

(c) of any other information that the Court considers appropriate.

*[Section 23 amended: No. 104 of 1994 s. 225.]*

*[**24.** Deleted: No. 23 of 2015 s. 15.]*

*[**25-26.** Deleted: No. 104 of 1994 s. 226.]*

### 27. Certain orders may be set aside

(1) If an order is made under this Act in respect of a child in the absence of his parent or guardian, to whom reasonable notice of the charge or application had not been given, such order may for good cause shown be set aside by the Court upon the application of such parent or guardian made within 3 months after the making of the order or such longer period as the Court may allow if special circumstances are shown.

(2) In the case of a prosecution or application against or concerning a child, the Court may cause a copy or notice of the charge or application to be served upon a parent of or a person standing in loco parentis to the child if that is practicable prior to the hearing of the charge or application.

*[Section 27 amended: No. 84 of 2004 s. 80.]*

## 28. Court may re-hear proceedings

(1) Subject to this section, the Court may order that any original proceedings in which an order (not being an order made following conviction on indictment) was made against a child under the *Young Offenders Act 1994* or the *Children and Community Services Act 2004* are to be reheard.

(2) An order may be made under subsection (1) by the Court when constituted by the President of the Court's own motion or upon cause being shown on the application of —

(a) the CEO (young offenders) or the CEO as defined in section 3 of the *Children and Community Services Act 2004*; or

(b) a parent or guardian of the child against whom an order may be made in those proceedings; or

(c) a child to whom the proceedings relate; or

(d) the prosecutor in those proceedings.

(3) The Court rehearing any proceedings under this section —

(a) is not required to be constituted in the same manner as the Court before which the original proceedings were heard; and

(b) shall not be constituted by JPs sitting alone; and

(c) has power to set aside or vary any finding or order made in the original proceedings; and

(d) has power to make any finding or order which could have been made in the original proceedings.

(4) Except where the Court considers that it is just to do so, no new evidence shall be admitted at the rehearing of any proceedings under this section.

(5) Where any proceedings are re-heard under this section the proceedings as so re-heard shall not be taken to have been original proceedings for the purposes of any further application

under this section, but nothing in this section derogates from any right that may be available to any person by way of appeal.

*[Section 28 amended: No. 31 of 1993 s. 29; No. 104 of 1994 s. 227; No. 57 of 1997 s. 31; No. 34 of 2004 s. 251; No. 59 of 2004 s. 73; No. 84 of 2004 s. 80; No. 65 of 2006 s. 56.]*

### 29. Witnesses and contempt

(1) The Court may, by summons issued by a judge, magistrate, JP or registrar, summon witnesses for examination on oath, in the manner provided for proceedings before the Magistrates Court for simple offences.

(2) A person who, being required by summons to attend as a witness fails, without reasonable excuse, to appear at the time and place specified in the summons or who, being in attendance whether voluntarily or pursuant to a summons, refuses to be sworn or to make an affirmation or refuses to answer any lawful question is guilty of contempt of court.

(3) A person who wilfully insults the Court or a judge or magistrate, or a JP constituting the Court, wilfully interrupts the proceedings of the Court, or who hinders, obstructs, threatens or assaults any officer, party or witness in attendance before, or going to or returning from, the Court, is guilty of contempt of court.

(4) A person who is guilty of contempt of court under subsection (2) or (3) may be summarily convicted by the Court and on conviction is liable to imprisonment for a term not exceeding 12 months, or to a fine not exceeding $5 000, or to both, or in default of immediate payment of the fine imposed, to imprisonment —

(a) until the fine is paid; or

(b) for a term not exceeding 12 months,

whichever may be the shorter period.

(5) This section applies in relation to an act or omission by a person outside the State as if it were an act or omission by the person in the State.

*[Section 29 amended: No. 59 of 2004 s. 73; No. 7 of 2008 s. 153.]*

### 30. Transfer of complaint to court of competent jurisdiction

(1) Where a prosecution for an offence is commenced in the Court and the Court is of the opinion that it does not have jurisdiction to hear and determine the charge, the Court may order the transfer of the matter to a court of competent jurisdiction.

(2) Where the Court makes a decision on a charge in the belief that at the time the offence was allegedly committed, or at any other time material to jurisdiction, the person was under the age of 18 years when in fact the person was not —

(a) the proceedings are not on that account invalidated; and

(b) the decision has full force and effect and anything done pursuant to the decision is lawful; but

(c) the Court or, if the decision is the subject of an application for leave to appeal or of an appeal, the Supreme Court, on the application of the Attorney General, shall —

(i) set aside the decision; and

(ii) remit any penalty that may have been imposed; and

(iii) order the transfer of the charge to a court of competent jurisdiction to be dealt with according to law.

(3) In subsection (2), ***decision*** has the same definition as in section 41(2).

(4) Where under this Act the Court orders the transfer of a charge or a matter to another court, the registrar shall give effect to the order.

*[Section 30 amended: No. 15 of 1991 s. 13; No. 27 of 2002 s. 24; No. 59 of 2004 s. 73; No. 84 of 2004 s. 80.]*

# Part 4 — Procedure of the Court

## 31. Exclusion of persons from hearing

(1) At any hearing or trial relating to a charge against, or any application concerning, a child or where the interests of a child may be prejudicially affected, the Court may order that any persons shall be excluded from the court-room or place of hearing.

(2) Where the Court has made an order under subsection (1), it shall after the conclusion of the hearing, make available to any person who satisfies the Court that that person has suffered loss by reason of an offence committed by the child or has other good cause, the name, age, and address of the child and the particulars of the offence with which the child was charged.

*[**32.** Deleted: No. 84 of 2004 s. 18.]*

## 33. CEOs or officers may take part in proceedings

(1) In this section —

***prescribed officer*** means —

(a) the CEO (young offenders) or an officer of the young offenders agency who is authorised by that CEO; or

(b) the CEO as defined in section 3 of the *Children and Community Services Act 2004* or an officer as defined in that section who is authorised by that CEO.

(2) A prescribed officer may be present at the hearing in the Court of any charge of an offence against, or application or other proceeding concerning, a child and, if present, is entitled to examine and cross-examine witnesses and to be heard concerning the remand, punishment or disposal of the child.

*[Section 33 inserted: No. 34 of 2004 s. 251; amended: No. 65 of 2006 s. 57; No. 2 of 2008 s. 57.]*

### 34. Court must explain proceedings

(1) In any proceedings before the Court, the Court must satisfy itself that the child who is the subject of the proceedings understands the nature of those proceedings.

*[(2) deleted]*

(3) No order or adjudication of the Court is defective on the ground of failure to comply with this section if the Court has substantially complied with the provisions of the section.

*[Section 34 amended: No. 104 of 1994 s. 228.]*

### 35. Restrictions on reports of proceedings

(1) Except where done in accordance with an order made under section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34, a person shall not publish or cause to be published in any newspaper or other publication or broadcast or cause to be broadcast by radio or television a report of any proceedings in the Court, or in any other court on appeal from the Court, containing any particulars or other matter likely to lead to the identification of a child who is concerned in those proceedings —

(a) as a person against whom the proceedings are taken; or

(b) as a person in respect of whom the proceedings are taken; or

(c) as a witness; or

(d) as a person against or in respect of whom an offence has or is alleged to have been committed.

(2) In the case of criminal proceedings in the Supreme Court or the District Court, including any appellate proceedings to which subsection (1) does not apply, the court may, after considering the public interest and the interests of the child or children concerned, order that no person shall publish or cause to be published in any newspaper or other publication or broadcast or

cause to be broadcast by radio or television a report of those proceedings containing any particulars or other matter likely to lead to the identification of a child who is concerned in those proceedings —

(a) as a person against whom those proceedings are taken; or

(b) as a witness; or

(c) as a person against or in respect of whom an offence has or is alleged to have been committed.

(3) Except where done in accordance with an order made under section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34, in the case of proceedings in any court in which a person is alleged to have committed an offence under Chapter XXII or XXXI of *The Criminal Code*, including any appellate proceedings in respect of a conviction for such an offence, a person shall not publish or cause to be published in any newspaper or other publication or broadcast or cause to be broadcast by radio or television a report of those proceedings containing any particulars or other matter likely to lead to the identification of a child against or in respect of whom that offence has been or is alleged to have been committed.

(4) A person who contravenes subsection (1) or (3) or an order made under subsection (2) commits an offence punishable —

(a) by the Supreme Court as for a contempt; or

(b) after summary conviction by a fine of $10 000 or imprisonment for 12 months.

(5) Proceedings for a contravention of subsection (1) or (3) or of an order made under subsection (2) may be taken by the Attorney General or a person on his behalf.

*[Section 35 amended: No. 15 of 1991 s. 15 and 17(2); No. 14 of 1992 s. 6(8); No. 59 of 2010 s. 44; No. 26 of 2011 s. 4.]*

### 36. Disclosure of convictions, orders etc. restricted

(1) Where —

(a) a charge against a child is dismissed by the Court; or

*[(ab) deleted]*

(b) a child is convicted or found guilty of an offence by the Court,

a person other than the child shall not, in a manner which identifies or is likely to lead to the identification of the child, disclose the fact of the dismissal, the conviction or finding of guilt or any relevant order except to a court of law, to a person acting in the performance of duties under any written law, to a person who as part of the person's duties is concerned with the custody or welfare of the child, or in accordance with section 36AA(1) or an order made under section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34.

(2) A person who contravenes this section commits an offence punishable —

(a) by the Supreme Court as for a contempt; or

(b) after summary conviction by a fine of $10 000 or imprisonment for 12 months.

(3) Proceedings for a contravention of this section may be taken by the Attorney General or a person on his behalf.

*[Section 36 amended: No. 15 of 1991 s. 16 and 17(3); No. 57 of 1997 s. 31; No. 34 of 2004 s. 251; No. 84 of 2004 s. 80; No. 14 of 2008 s. 43(4); No. 59 of 2010 s. 45; No. 26 of 2011 s. 5; No. 23 of 2015 s. 16.]*

### 36AA. Disclosure for certain research purposes

(1) Where —

(a) a charge against a child is dismissed by the Court; or

(b) a child is convicted or found guilty of an offence by the Court,

the fact of the dismissal, the conviction or finding of guilt or any relevant order may be disclosed to a health department officer for use in the research project.

(2) In subsection (1) —

***health department officer*** means a member of the Public Service employed in the Department as defined in the *Health (Miscellaneous Provisions) Act 1911* section 3(1);

***research project*** means the project known as "Developmental Pathways Project" conducted by the Telethon Institute for Child Health Research.

(3) Information may be disclosed under subsection (1) —

(a) even if the disclosure is in a manner which identifies or is likely to lead to the identification of the child; and

(b) despite any written law relating to confidentiality or secrecy.

(4) The chief executive officer of the department of the Public Service principally assisting in the administration of this Act must establish procedures for the disclosure of information under subsection (1).

(5) The regulations may include provisions about —

(a) the receipt and storage of information disclosed under this section; and

(b) the restriction of access to such information.

(6) If information is disclosed, in good faith, under subsection (1) —

(a) no civil or criminal liability, or liability to be punished for a contempt of court, is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

*[Section 36AA inserted: No. 26 of 2011 s. 6; amended: No. 19 of 2016 s. 101.]*

### 36A. Supreme Court may allow publication etc.

(1) The Supreme Court may, after considering the public interest and the interests of the child, by order allow the publication, broadcast or disclosure of any matter prohibited by section 35(1), (3) or 36 (***prohibited matter***).

(2) Without limiting the generality of subsection (1), the Court, in considering the public interest and the interests of the child, may have regard to all or any of the following —

(a) the age, safety or well-being of the child;

(b) the safety or well-being of a person other than the child;

(c) the safety of the public or the protection of property;

(d) the public interest in the apprehension of escapees for the purpose of returning them to lawful custody;

(e) the public interest in the prevention or detection of a crime.

(3) Only the Attorney General or the Commissioner of Police may make an application for an order under subsection (1) and, unless the Court otherwise orders, the application shall be ex parte.

(4) An order under subsection (1) may contain such directions as the Court thinks fit including, without limiting that expression, directions as to —

(a) the content of any matter to be published, broadcast or disclosed;

(b) when, where and by what means the publication, broadcast or disclosure may be made;

(c) the duration of the order.

(5) An order under subsection (1) may relate to prohibited matter in respect of a person over the age of 18 years in which case the reference in subsection (2) to a child includes a reference to that person.

*[Section 36A inserted: No. 15 of 1991 s. 17(1).]*

## 37. Practice and procedure

(1) Subject to this Act and to the rules of court, the President is responsible for the administration of the Court, the disposition of the business of the Court and for its practice and procedure.

(2) Subject to this Act and the *Children and Community Services Act 2004* and any other Act that confers jurisdiction on the Court, the practice and procedure of the Court shall be governed by rules of court, and until provision is made by rules of court or where no special provision is contained in the rules of court —

(a) the practice and procedure of the Court when it is exercising the jurisdiction conferred by section 19(1) shall be that provided by the *Criminal Procedure Act 2004*; and

(b) the practice and procedure of the Court when it is exercising the jurisdiction conferred by section 20 shall be that provided by the *Magistrates Court (Civil Proceedings) Act 2004* and the rules of court made under that Act by the Magistrates Court.

(3) Judges, magistrates, JPs and counsel shall not robe for proceedings of the Court.

*[Section 37 amended: No. 34 of 2004 s. 251; No. 59 of 2004 s. 73; No. 84 of 2004 s. 18.]*

## 38. Rules of court

The judge, or if there is more than one judge a majority of the judges, may make rules for regulating and prescribing the

practice and procedure to be followed in the Court and for regulating and prescribing all matters or things incidental or relating to such practice and procedure or necessary or convenient to be prescribed for the conduct of any business of the Court.

### 39. Mode of enforcing orders by Court

The Court, when constituted by a judge, has and may exercise the same power and authority for compelling obedience to and for punishing disobedience of any judgment or order as the Supreme Court or a judge of the Supreme Court may exercise for compelling obedience to or punishing disobedience of any judgment or order given or made by the Supreme Court.

### 39A. Judgments, enforcement of

(1) In this section —

***judgment*** means a judgment, order, direction or decision of the Court given or made in the exercise of its non-criminal jurisdiction.

(2) A person to whom money is to be paid under a judgment may enforce it by lodging a copy of it, certified by a registrar, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.

(3) If, or to the extent that, a judgment does not require the payment of money, a person entitled to the benefit of the judgment may enforce it by lodging a copy of it, certified by a registrar, and an affidavit stating to what extent it has not been complied with, with the Magistrates Court.

(4) A judgment that is lodged with another court under subsection (2) or (3) is to be taken to be a judgment of the other court and may be enforced accordingly.

*[Section 39A inserted: No. 5 of 2008 s. 5.]*

# Part 5 — Review and appeal

## 40. Review by President of certain sentences

(1) Subject to this Act, where the Court, when constituted so as not to consist of or include a judge, makes a finding that a charge against a child is proved and makes an order against or in relation to the child in consequence of that finding, the Court when constituted by the President may, of its own motion or upon an application made under subsection (2), reconsider the order and —

(a) confirm the order; or

(b) discharge the order and substitute any other order that the Court, if it had been constituted by the President, could have made in relation to the offence.

(2) Subject to this section, an application for reconsideration of an order may be made, in accordance with the rules of court —

(a) by the child, within one month after the date of the order;

(b) by the CEO (young offenders), on behalf of the child, at any time after the date of the order;

(c) by the prosecutor, within one month after the date of the order.

(3) Where an application has been made under this section for reconsideration of a custodial sentence, an application may be made to the Court under the *Bail Act 1982* by or on behalf of the child and, if such an application is made, section 8 of that Act applies as if the consideration of bail for the purposes of this section were a first consideration of bail for an offence.

(4) The Court shall notify the applicant and all other parties concerned with the application of the place, date and time for the hearing of the application.

(5) Subject to subsection (6), where leave to appeal is granted under section 41 in respect of the original order —

(a) no application under this section may subsequently be made; and

(b) any application made under this section and not finally determined when leave to appeal is granted under section 41 shall be deemed to be withdrawn.

(6) Where an application under this section or an application for leave to appeal is withdrawn, all other parties concerned shall be notified accordingly, and thereupon an application for leave to appeal may be made, or an application may be made under this section, as the case may require, in all respects as if the date of that withdrawal were the date upon which the original order was made.

(7) This section applies in respect of a finding and order made by a magistrate whether or not the magistrate exercised extended powers conferred under section 22.

(8) An appeal shall lie to the Court of Appeal from any order made by the Court under this section.

*[Section 40 amended: No. 33 of 1989 s. 18; No. 31 of 1993 s. 31; No. 34 of 2004 s. 251; No. 45 of 2004 s. 29; No. 65 of 2006 s. 58; No. 5 of 2008 s. 6; No. 14 of 2008 s. 43(5); No. 23 of 2015 s. 17.]*

### 41. Appeals against decisions of magistrates etc.

Subject to this Part, an appeal against a decision of the Court when constituted so as not to consist of or include a judge may be made under and subject to Part 2 of the *Criminal Appeals Act 2004*.

*[Section 41 inserted: No. 84 of 2004 s. 15.]*

## 42. Appeal against certain other orders

(1) Subject to this Act, where the Court, when constituted so as not to consist of or include a judge, makes any finding, order, or other decision on the hearing of an application under Part 4 or 5 of the *Children and Community Services Act 2004* the finding, order or decision may be the subject of an appeal made in accordance with Part 2 of the *Criminal Appeals Act 2004*, as if it were a decision by a court of summary jurisdiction, by —

(a) the CEO as defined in section 3 of the *Children and Community Services Act 2004*; or

(b) the parent or guardian of the child in relation to whom the application was made; or

(c) the child in relation to whom the application was made; or

(d) the person by whom the application was made.

(2) Where a person has appealed, or is entitled to appeal, under subsection (1), the person may, on not less than 48 hours' notice to the CEO as defined in section 3 of the *Children and Community Services Act 2004* (if that CEO is not the applicant), apply to a judge for an order relating to the placement of the child pending the final disposition of the proceedings and the judge may make such order as in the circumstances seems appropriate having regard primarily to the welfare of the child.

*[Section 42 inserted: No. 33 of 1989 s. 18; amended: No. 31 of 1993 s. 32; No. 57 of 1997 s. 31; No. 34 of 2004 s. 251; No. 59 of 2004 s. 73; No. 84 of 2004 s. 18.]*

## 42A. Appeals from judges' decisions in criminal matters

Subject to section 43, an appeal against a decision or judgment of the Court when constituted so as to consist of or include a judge may be made under and subject to Part 3 of the *Criminal Appeals Act 2004* which, with any necessary changes, applies as if the decision or judgment were a decision or judgment made by a judge of a superior court (as defined in section 4 of that

Act) in a trial by a judge alone under the *Criminal Procedure Act 2004*.

*[Section 42A inserted: No. 84 of 2004 s. 16.]*

## 43. Appeals to Court of Appeal

*[(1)-(3) deleted]*

(4) Subject to this Act, where the Court, when constituted by or so as to include a judge, makes any finding, order or other decision on the hearing of an application under Part 4 or 5 of the *Children and Community Services Act 2004* an appeal may be made to the Court of Appeal against the finding, order or other decision by —

(a) the CEO as defined in section 3 of the *Children and Community Services Act 2004*; or

(b) the parent or guardian of the child in relation to whom the application was made; or

(c) the child in relation to whom the application was made; or

(d) the person by whom the application was made.

(5) An appeal under subsection (4) must be commenced and conducted in accordance with rules of court made by the Supreme Court.

(6) An appeal under subsection (4) cannot be commenced later than 21 days after the date of the judge's finding, order or other decision unless the Court of Appeal orders otherwise.

(7) The leave of the Court of Appeal is required for each ground of appeal in an appeal under subsection (4).

(8) In an appeal under subsection (4), the Court of Appeal —

(a) may affirm, vary or set aside the judge's finding, order or other decision;

(b) may make any finding, order or other decision that the judge could have made;

(c) if it sets aside the judge's finding, order or other decision, may order the application concerned be dealt with again.

*[Section 43 amended: No. 15 of 1991 s. 19; No. 31 of 1993 s. 32; No. 104 of 1994 s. 230; No. 57 of 1997 s. 31; No. 34 of 2004 s. 251; No. 45 of 2004 s. 29; No. 59 of 2004 s. 73; No. 84 of 2004 s. 17.]*

*[Part 6 (s. 44-50) deleted: No. 53 of 2000 s. 3.]*

# Part 7 — Miscellaneous

## 51. Forms of proceedings

Every prosecution notice, summons, conviction, order or warrant under this Act shall be valid and sufficient —

(a) if it is in any applicable prescribed form, with such modifications as circumstances may require; or

(b) if the offence, act or default is stated in the prosecution notice, summons, conviction, order or warrant in the words of the relevant written law,

and no conviction, order or warrant shall be held void by reason of any defect of form.

*[Section 51 amended: No. 84 of 2004 s. 80.]*

## 51A. Court's records, access to

(1) In this section —

***court record***, in relation to proceedings before the Court, means —

(a) any formal document that has been filed with or issued by the Court in accordance with law and that forms part of the Court's records;

(b) the transcript of —

(i) evidence taken by the Court in the proceedings;

(ii) any judgment (including the reasons for it) given by the Court in the proceedings;

(c) any document received into evidence in the proceedings;

(d) any written judgment (including the reasons for it) given, or written orders made, by the Court in the proceedings;

***reasons***, in relation to a judgment, includes sentencing remarks.

(2) This section is subject to any other written law that relates to the possession or publication of documents and other records or to the possession of any thing.

(3) In respect of criminal proceedings before the Court, each of the following people is entitled, on request, to inspect or obtain a copy of any document that is part of the court record and any document received by the Court in sentencing proceedings —

(a) a party to the proceedings;

(b) the Commissioner of Police;

(c) the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991*;

(d) the Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003*;

(e) the Chief Assessor appointed under the *Criminal Injuries Compensation Act 2003*;

(f) the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*;

(g) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994*;

(h) the CEO as defined in the *Road Traffic (Administration) Act 2008* section 4;

(i) a person authorised by one of the above persons;

(j) a person prescribed by the regulations.

(4) In respect of proceedings before the Court that are not criminal proceedings a party to the proceedings may, on request, inspect or obtain a copy of any document that is part of the court record.

(5) With the leave of the Court a person who is not referred to in subsection (3) or (4) may inspect or obtain a copy of any document that is part of the court record.

(6) With the leave of the Court any person may inspect or obtain a copy of any thing (other than a document) received by the Court in proceedings, on which information is recorded or stored, such as a photograph, tape or disc.

(7) With the leave of the Court a person may listen to or view a recording of proceedings before the Court.

(8) When giving leave under this section the Court may impose any conditions on the person's access to information, including a condition prohibiting or limiting the publication or use of the information.

(9) A decision by the Court under this section is administrative and is final and not subject to any form of review.

(10) The regulations may prescribe fees to be paid for inspecting, obtaining copies of or listening to information under this section.

*[Section 51A inserted: No. 59 of 2004 s. 71; amended: No. 8 of 2012 s. 56; No. 35 of 2014 s. 39).]*

## 52. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

## 53. Fees, regulations may prescribe

(1) Without limiting section 52, regulations may provide for or prescribe the fees to be paid in respect of or in connection with any case in the Court's jurisdiction.

(2) Without limiting subsection (1), regulations may provide for or prescribe the fees to be paid —

(a) when commencing a case in the Court; and

(b) when entering a case for trial or at any other stage of proceedings in a case; and

(c) when lodging a document with the Court; and

(d) for the issue of any document by the Court; and

(e) for the service of any document; and

(f) in respect of the conduct of the business of any office of or connected with the Court; and

(g) for the carrying out of any order or warrant of the Court.

(3) Without limiting subsection (1), regulations may prescribe the fees and expenses to be paid to mediators and experts.

(4) All fees received by the Court are to be credited to the Consolidated Account.

*[Section 53 inserted: No. 59 of 2004 s. 72; amended: No. 77 of 2006 s. 4.]*

# Part 8 — Transitional provisions for *Courts Legislation Amendment (Magistrates) Act 2022*

*[Heading inserted: No. 2 of 2022 s. 9.]*

## 54. Magistrates performing Children's Court functions before commencement of *Courts Legislation Amendment (Magistrates) Act 2022*

(1) In this section —

***Children's Court functions*** and ***dually appointed magistrate*** have the meanings given in section 11(1).

(2) This section applies to a dually appointed magistrate who has performed Children's Court functions on a full-time or part-time basis before the day (***commencement day***) on which the *Courts Legislation Amendment (Magistrates) Act 2022* Part 2 comes into operation.

(3) Without limiting section 11, the President may give the Chief Magistrate a notice under section 11(2) or (4) in relation to the magistrate.

(4) If no notice has been given under section 11(2) or (4) in relation to the magistrate, section 11 applies in relation to the magistrate as if on commencement day —

(a) the President, by notice under section 11(2), informed the Chief Magistrate that the President considers that, to deal with the workload of the Court, it is necessary or desirable for the magistrate for the time being to perform Children's Court functions on the basis on which those functions were performed before commencement day; and

(b) the Chief Magistrate consented under section 11(3)(a) to the magistrate for the time being performing Children's Court functions on that basis.

*[Section 54 inserted: No. 2 of 2022 s. 9.]*

# Schedule 1 — Oath and affirmation of office

[s. 12(1)]

*[Heading inserted: No. 24 of 2005 s. 16.]*

I, [*name*], [*insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005*] that I will faithfully serve the people and the State of Western Australia in the office of [*title of office*] of the Children's Court of Western Australia and I will do right to all manner of people, according to law, without fear or favour, affection or ill will.

*[Schedule 1 inserted: No. 24 of 2005 s. 16.]*

# Notes

This is a compilation of the *Children's Court of Western Australia Act 1988* and includes amendments made by other written laws [1M]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

## Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Children's Court of Western Australia Act (No. 2) 1988* [2] | 69 of 1988 | 15 Dec 1988 | s. 1 and 2: 15 Dec 1988; Act other than s. 1 and 2: 1 Dec 1989 (see s. 2 and *Gazette* 24 Nov 1989 p. 4327) |
| *Justices Amendment Act 1989* s. 18 | 33 of 1989 | 22 Dec 1989 | 1 Jun 1991 (see s. 2 and *Gazette* 17 May 1991 p. 2455) |
| *Children's Court of Western Australia Amendment Act (No. 2) 1991* Pt. 2 (s. 3-20) | 15 of 1991 | 21 Jun 1991 | s. 8 and 20: 1 Dec 1989 (see s. 2(1)); Pt. 2 (other than s. 8 and 20): 9 Aug 1991 (see s. 2(2) and *Gazette* 9 Aug 1991 p. 4101) |
| *Acts Amendment (Sexual Offences) Act 1992* s. 4(3) and 6(8) | 14 of 1992 | 17 Jun 1992 | 1 Aug 1992 (see s. 2 and *Gazette* 28 Jul 1992 p. 3671) |
| *Acts Amendment (Ministry of Justice) Act 1993* Pt. 5 | 31 of 1993 | 15 Dec 1993 | 1 Jul 1993 (see s. 2) |
| *Young Offenders Act 1994* Pt. 11 Div. 2 | 104 of 1994 | 11 Jan 1995 | 13 Mar 1995 (see s. 2 and *Gazette* 10 Mar 1995 p. 895) |
| *Sentencing (Consequential Provisions) Act 1995* Pt. 9 | 78 of 1995 | 16 Jan 1996 | 4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632) |
| **Reprint of the *Children's Court of Western Australia Act 1988* as at 23 Apr 1996** (includes amendments listed above except those in the *Sentencing (Consequential Provisions) Act 1995*) | | | |
| *Local Government (Consequential Amendments) Act 1996* s. 4 | 14 of 1996 | 28 Jun 1996 | 1 Jul 1996 (see s. 2) |
| *Restraining Orders Act 1997* s. 81 | 19 of 1997 | 28 Aug 1997 | 15 Sep 1997 (see s. 2 and *Gazette* 12 Sep 1997 p. 5149) |
| *Statutes (Repeals and Minor Amendments) Act 1997* s. 31 | 57 of 1997 | 15 Dec 1997 | 15 Dec 1997 (see s. 2(1)) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Acts Amendment (Abortion) Act 1998* s. 9 | 15 of 1998 | 26 May 1998 | 26 May 1998 (see s. 2) |
| *School Education Act 1999* s. 247 | 36 of 1999 | 2 Nov 1999 | 1 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7904) |
| **Reprint of the *Children's Court of Western Australia Act 1988* as at 25 Aug 2000** (includes amendments listed above except those in the *School Education Act 1999*) | | | |
| *State Records (Consequential Provisions) Act 2000* Pt. 2 | 53 of 2000 | 28 Nov 2000 | 1 Dec 2001 (see s. 2 and *Gazette* 30 Nov 2001 p. 6067) |
| *Acts Amendment (Evidence) Act 2000* Pt. 4 | 71 of 2000 | 6 Dec 2000 | 3 Jan 2001 |
| *Criminal Law (Procedure) Amendment Act 2002* Pt. 4 Div. 2 | 27 of 2002 | 25 Sep 2002 | 27 Sep 2002 (see s. 2 and *Gazette* 27 Sep 2002 p. 4875) |
| *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 17, 107 and 122 | 65 of 2003 | 4 Dec 2003 | 1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722) |
| *Statutes (Repeals and Minor Amendments) Act 2003* s. 35 | 74 of 2003 | 15 Dec 2003 | 15 Dec 2003 (see s. 2) |
| *Criminal Code Amendment Act 2004* s. 58 | 4 of 2004 | 23 Apr 2004 | 21 May 2004 (see s. 2) |
| **Reprint 3: The *Children's Court of Western Australia Act 1988* as at 10 Sep 2004** (includes amendments listed above) | | | |
| *Sentencing Legislation Amendment Act 2004* s. 14(3) | 27 of 2004 (as amended by No. 41 of 2006 s. 95(2)) | 14 Oct 2004 | 31 May 2006 (see s. 2 and *Gazette* 30 May 2006 p. 1965) |
| *Children and Community Services Act 2004* s. 251 | 34 of 2004 | 20 Oct 2004 | 1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695) |
| *Acts Amendment (Court of Appeal) Act 2004* s. 29 | 45 of 2004 | 9 Nov 2004 | 1 Feb 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163) |
| *Courts Legislation Amendment and Repeal Act 2004* Pt. 7 | 59 of 2004 | 23 Nov 2004 | 1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* Pt. 4 and s. 80 | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction: *Gazette* 7 Jan 2005 p. 53)) |
| *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005* Pt. 5 | 24 of 2005 | 2 Dec 2005 | 1 Jan 2006 (see s. 2(1) and *Gazette* 23 Dec 2005 p. 6244) |
| **Reprint 4: The *Children's Court of Western Australia Act 1988* as at 21 Apr 2006** (includes amendments listed above except those in the *Sentencing Legislation Amendment Act 2004*) | | | |
| *Prisons and Sentencing Legislation Amendment Act 2006* Pt. 6 | 65 of 2006 | 8 Dec 2006 | 4 Apr 2007 (see s. 2 and *Gazette* 3 Apr 2007 p. 1491) |
| *Financial Legislation Amendment and Repeal Act 2006* s. 4 and Sch. 1 cl. 24 | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137) |
| *Criminal Law and Evidence Amendment Act 2008* s. 57 | 2 of 2008 | 12 Mar 2008 | 27 Apr 2008 (see s. 2 and *Gazette* 24 Apr 2008 p. 1559) |
| *Acts Amendment (Justice) Act 2008* Pt. 2 | 5 of 2008 | 31 Mar 2008 | 31 Jul 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253) |
| *Cross-border Justice Act 2008* Pt. 15 Div. 1 | 7 of 2008 | 31 Mar 2008 | 1 Dec 2009 (see s. 2(b) and *Gazette* 9 Oct 2009 p. 3991) |
| *Parental Support and Responsibility Act 2008* s. 43 | 14 of 2008 | 15 Apr 2008 | 28 Mar 2009 (see s. 2 and *Gazette* 27 Mar 2009 p. 917) |
| *Legal Profession Act 2008* s. 643 | 21 of 2008 | 27 May 2008 | 1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511) |
| **Reprint 5: The *Children's Court of Western Australia Act 1988* as at 13 Feb 2009** (includes amendments listed above except those in the *Cross-border Justice Act 2008*, the *Parental Support and Responsibility Act 2008* and the *Legal Profession Act 2008*) | | | |
| *Prohibited Behaviour Orders Act 2010* Pt. 5 Div. 1 | 59 of 2010 | 8 Dec 2010 | 23 Feb 2011 (see s. 2(b) and *Gazette* 23 Feb 2011 p. 633) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Young Offenders Legislation Amendment (Research Information) Act 2011* Pt. 2 | 26 of 2011 | 11 Jul 2011 | 12 Jul 2011 (see s. 2(b)) |
| *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 7 | 8 of 2012 | 21 May 2012 | 27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371) |
| *Restraining Orders Amendment Act 2013* Pt. 3 | 14 of 2013 | 4 Oct 2013 | 4 Oct 2013 (see s. 2) |
| *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Pt. 3 Div. 2 | 20 of 2013 | 4 Nov 2013 | 25 Nov 2013 (see s. 2(b) and *Gazette* 22 Nov 2013 p. 5391) |
| **Reprint 6: The *Children's Court of Western Australia Act 1988* as at 13 Jun 2014** (includes amendments listed above except those in the *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 7) | | | |
| *Corruption and Crime Commission Amendment (Misconduct) Act 2014* s. 39 | 35 of 2014 | 9 Dec 2014 | 1 Jul 2015 (see s. 2(b) and *Gazette* 26 Jun 2015 p. 2235) |
| *Children and Community Services Legislation Amendment and Repeal Act 2015* Pt. 2 Div. 3 Subdiv. 1 | 23 of 2015 | 17 Sep 2015 | 1 Jan 2016 (see s. 2(b) and *Gazette* 15 Dec 2015 p. 5027) |
| *Public Health (Consequential Provisions) Act 2016* s. 101 | 19 of 2016 | 25 Jul 2016 | 24 Jan 2017 (see s. 2(1)(c) and *Gazette* 10 Jan 2017 p. 165) |
| *Criminal Law Amendment (Uncertain Dates) Act 2020* Pt. 3 | 47 of 2020 | 9 Dec 2020 | 10 Dec 2020 (see s. 2(b)) |
| *Courts Legislation Amendment (Magistrates) Act 2022* Pt. 2 | 2 of 2022 | 28 Feb 2022 | 1 Mar 2022 (see s. 2(b)) |
| *Legal Profession Uniform Law Application Act 2022* s. 424 | 9 of 2022 | 14 Apr 2022 | 1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Criminal Law (Mental Impairment) Act 2023* Pt. 15 Div. 2 | 10 of 2023 | 13 Apr 2023 | 1 Sep 2024 (see s. 2(b) and SL 2024/175 cl. 2) |
| *Abortion Legislation Reform Act 2023* Pt. 4 Div. 1 | 20 of 2023 | 27 Sep 2023 | 27 Mar 2024 (see s. 2(b) and SL 2024/21 cl. 2) |

## Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 | 43 of 2000 | 2 Nov 2000 | To be proclaimed (see s. 2(2)) |
| *Community Protection (Offender Reporting) Amendment Act 2024* Pt. 3 Div. 2 Subdiv. 1 | 35 of 2024 | 22 Oct 2024 | 31 Dec 2025 (see s. 2(b) and SL 2025/201 cl. 2) |

## Other notes

[1M] Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 13 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

[1] The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section.

[2] Now known as the *Children's Court of Western Australia Act 1988*; short title changed (see note under s. 1).

# Defined terms

*[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]*

| Defined term | Provision(s) |
|---|---|
| adult | 19C(1) |
| CEO (young offenders) | 3(1) |
| Chief Magistrate | 3(1) |
| child | 3(1) |
| Children's Court functions | 11(1), 54(1) |
| commencement day | 54(2) |
| Court | 2(1) |
| court record | 51A(1) |
| decision | 30(3) |
| detention | 21(1) |
| dually appointed magistrate | 11(1), 54(1) |
| health department officer | 36AA(2) |
| judge | 3(1) |
| judgment | 39A(1) |
| legal experience | 3(2) |
| magistrate | 3(1) |
| prescribed officer | 33(1) |
| President | 3(1) |
| prohibited matter | 36A(1) |
| reasons | 51A(1) |
| registrar | 3(1) |
| research project | 36AA(2) |
| young offenders agency | 3(1) |

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