

WESTERN AUSTRALIA

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**CHILDREN'S COURT OF  
WESTERN AUSTRALIA  
AMENDMENT ACT (No. 2)**

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No. 15 of 1991

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**AN ACT to amend the *Children's Court of Western Australia Act (No. 2) 1988* and for related purposes.**

[Assented to 21 June 1991.]

The Parliament of Western Australia enacts as follows:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the *Children's Court of Western Australia Amendment Act (No. 2) 1991*.

**Commencement**

2. (1) Sections 8 and 20 shall be deemed to have come into operation on 1 December 1989.

(2) Subject to subsection (1), this Act shall come into operation on such day as is fixed by proclamation.

PART 2—*CHILDREN'S COURT OF WESTERN AUSTRALIA  
ACT (No. 2) 1988*

**Principal Act**

3. In this Part the *Children's Court of Western Australia Act (No. 2) 1988\** is referred to as the principal Act.

[\*Act No. 69 of 1988.]

**Section 1 amended**

4. Section 1 of the principal Act is amended by deleting "(No. 2)".

**Section 3 amended**

5. Section 3 of the principal Act is amended by inserting, after the definition of "Court", the following definition—

“ “Court of Criminal Appeal” has the same meaning as is stipulated in section 687 of *The Criminal Code*; ”.

**Section 4 amended**

6. Section 4 of the principal Act is amended in subsection (1)—

(a) by deleting "The" and substituting the following—

“ Subject to this Act, the ”;

and

(b) by deleting "and Part VII".

**Section 8A inserted**

7. The principal Act is amended by inserting after section 8 the following section—

**Absence etc., of President**

“ 8A. (1) Where—

- (a) the President is absent from duty for any reason;
- (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 10 amended**

8. Section 10 of the principal Act is amended—

- (a) by repealing subsection (4) and substituting the following subsection—

“ (4) The provisions of sections 5, 5A, 5B, 7 (1), (3), (4) and (6), and 8 (1) and (2) of the *Stipendiary Magistrates Act 1957* apply with such modifications as circumstances require to a magistrate of the Court appointed on a full time basis in the same way as those provisions apply to a stipendiary magistrate. ”;

and

(b) by inserting after subsection (4) the following subsection—

“ (5) A magistrate of the Court may be appointed on other than a full time basis in which case—

(a) it shall be for such period as is specified in the instrument of appointment;

(b) the provisions of sections 5, 5A, 5B, 5C (5), 7 (1), (3) and (6), and 8 (1) of the *Stipendiary Magistrates Act 1957* apply with such modifications as circumstances require to a person so appointed in the same way as those provisions apply to a stipendiary magistrate. ”.

### **Section 12 amended**

9. Section 12 of the principal Act is amended by inserting after subsection (1) the following subsection—

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

(a) a judge of another court of the State who has taken an oath or affirmation of allegiance and a judicial oath or affirmation; or

(b) a magistrate who has taken the oaths or affirmations under section 8 (4) of the *Stipendiary Magistrates Act 1957*. ”.

### **Section 19 amended**

10. Section 19 of the principal Act is amended by repealing subsections (5), (6), (7) and (8).

**Sections 19A to 19F inserted**

11. After section 19 of the principal Act the following sections are inserted—

**Application of sections 19B to 19F**

“ 19A. 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.

**Jurisdiction and procedure for charges of indictable offences**

19B. (1) If a child is charged with an indictable offence of such a nature that if an adult were similarly charged—

- (a) a court of petty sessions could not deal summarily with the charge; or
- (b) the adult could elect not to have the charge dealt with summarily,

the child may elect to be tried by the Supreme Court or the District Court, as may be appropriate, and the Court shall so inform the child.

(2) If a child makes an election under subsection (1) the Court has and shall exercise only the jurisdiction and powers conferred on a court of petty sessions in relation to the examination and committal for trial of a person charged before justices with an indictable offence which can not be dealt with summarily.

(3) If a child does not make an election under subsection (1), and the charge is of such a nature that if an adult were similarly charged the charge could be dealt with summarily, the Court shall, subject to the provisions referred to in section 19 (1), hear and determine the charge summarily.

(4) If a child does not make an election under subsection (1), and the charge, if an adult were similarly charged before a court of petty sessions, could not be dealt with summarily—

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

(i) to serve or cause to be served on the child (or the child's solicitor or counsel), and lodged with the clerk, within such time as is specified, notice of the material evidence;

and

(ii) to afford the child (or the child's solicitor or counsel) reasonable opportunity to inspect any material exhibits,

the prosecution proposes to adduce at the hearing of the charge;

(b) on the making of a direction under paragraph (a), the Crown 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 complainant;

(c) the Court shall, subject to the provisions referred to in section 19 (1), hear and determine the charge as if the complaint were an indictment, and the hearing were a trial on indictment and *The Criminal Code* 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.

**Court may transfer charge to court  
of petty sessions where child and  
adult charged with same offence**

19C. (1) Notwithstanding section 19B, where—

- (a) the Court is satisfied that a person over the age of 18 years (“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

- (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,

the Court—

- (c) if satisfied the adult is to have a preliminary hearing, may order the transfer of the complaint to the court of petty sessions before which the adult is to have the preliminary hearing and that court or any other court of petty sessions which comes to deal with the complaint—

- (i) has and may exercise in relation to the child the same jurisdiction and powers as are conferred on it in relation to the examination and committal for trial of a person charged before justices with an indictable offence which cannot be dealt with summarily; and

- (ii) may conduct the preliminary hearing of the adult jointly with that of the child;

or

- (d) if satisfied the adult is to be tried on indictment, shall exercise only the jurisdiction and powers conferred on a court of petty sessions in relation to the examination and committal for trial of a person charged before justices with an indictable offence which cannot be dealt with summarily and, if there is no preliminary hearing or if the evidence is sufficient to put the child on trial for the offence, shall order the child to be committed for trial on indictment before the court before which the adult is to be tried.

(2) Where under subsection (1) (c) it becomes inexpedient or undesirable to conduct the preliminary hearing of the adult jointly with that of the child, a court of petty sessions may—

- (a) nevertheless exercise the jurisdiction and powers referred to in that subsection; or
- (b) on the application of the child, order the transfer of the complaint to the Court to be dealt with in accordance with section 19B or under subsection (1) (d).

(3) Where a child is committed for trial on indictment under subsection (1) (d) 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 complaint on which the child was committed to the Court to be heard and determined in accordance with section 19B (3) 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.

**Court may transfer charge to court  
of petty sessions where defendant  
has turned 18**

**19D.** 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;
- (b) the existence of an adult co-offender;
- (c) the effluxion of time since the offence;
- (d) the fact that the person is charged before a court of petty sessions with other offences;
- or
- (e) any other good cause,

order the transfer of the complaint to a court of petty sessions to be dealt with according to law and courts of petty sessions shall have jurisdiction accordingly.

**Procedure for charges of Commonwealth indictable offences**

**19E.** 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 Crown in the right of 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 complainant.

### **Rules**

19F. 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 24 amended**

12. Section 24 of the principal Act is amended in subsection (3) by deleting “(1)” and substituting the following—

“ (2) ”.

### **Section 30 amended**

13. Section 30 of the principal Act is amended—

(a) by inserting after the section designation “30.” the subsection designation “(1)”;

(b) by deleting “and the clerk shall give effect to any such order”;

and

(c) by inserting the following subsections—

“ (2) Where the Court makes a decision on a complaint 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;
  - (ii) remit any penalty that may have been imposed; and
  - (iii) order the transfer of the complaint to a court of petty sessions to be dealt with according to law.

(3) In subsection (2), "decision" has the same definition as in section 41 (2) and includes a decision made on a preliminary hearing.

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

### **Section 32 repealed and a section substituted**

14. Section 32 of the principal Act is repealed and the following section is substituted—

#### **Representation in the Court**

“ 32. (1) A party to a proceeding is entitled to appear before the Court and, either personally or by a certificated practitioner or a person permitted by this section, to conduct his or her case and to call, examine, cross-examine, or re-examine witnesses.

(2) Notwithstanding the *Legal Practitioners Act 1893*—

- (a) a complaint or an application may be prosecuted before the Court without leave—
- (i) where the complainant is the Crown, or a member of the Police Force acting in the course of his or her duties, by a police officer acting in the course of the officer's duties;
  - (ii) where the complaint is made or sworn by or on behalf of a local government authority, by an officer of the local government authority acting in the course of the officer's duties;
  - (iii) when the complaint is made or sworn, or the application is made, by or on behalf of a public authority, by an officer of the public authority acting in the course of the officer's duties;

and

- (b) a police officer acting in the course of the officer's duties may appear without leave on behalf of an applicant or a respondent before the Court when appointed by the applicant or respondent to do so.

(3) The Court may give leave for a person who is not a certificated practitioner to appear on behalf of a party, but that person is not entitled to claim, receive or recover, directly or indirectly, money or other remuneration for so appearing.

## (4) In this section—

“certificated practitioner” has the same definition as it has in the *Legal Practitioners Act 1893* and includes any person deemed to be a certificated practitioner;

“local government authority” means the executive body of a municipality or regional council within the meaning of the *Local Government Act 1960* or a Commissioner appointed under that Act;

“public authority” means a Minister of the Crown in right of the State, a department of the Public Service, a trading concern, public utility, agency, or instrumentality of the State, and any other person, whether corporate or not, that administers or carries on in the State, under the authority of a written law, any statutory function on behalf of the Government. ”.

### Section 35 amended

15. Section 35 of the principal Act is amended by inserting after subsection (3) the following subsections—

“ (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 36 amended

16. Section 36 of the principal Act is amended—

(a) by inserting after the section designation “36.” the subsection designation “(1)”; and

(b) by inserting the following subsections—

“ (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 36A inserted and consequential amendments**

17. (1) After section 36 of the principal Act the following section is inserted—

#### **Supreme Court may allow publication etc.**

“ 36A. (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. ”.

(2) Section 35 of the principal Act is amended—

- (a) in subsection (1) by deleting “A person shall not” and substituting the following—

“ Except where done in accordance with an order made under section 36A, a person shall not ”;

and

- (b) in subsection (3) by deleting “In the case of” and substituting the following—

“ Except where done in accordance with an order made under section 36A, in the case of ”.

(3) Section 36 of the principal Act is amended—

(a) by deleting “written law, or” and substituting the following—

“ written law, ”;

and

(b) by inserting after “child” where it occurs last the following—

“ , or in accordance with an order made under section 36A ”.

### **Section 41 repealed and a section substituted**

18. Section 41 of the principal Act is repealed and the following section is substituted—

#### **Appeals against decisions of members or a magistrate**

“ 41. (1) Subject to this Part, an appeal lies to the Supreme Court from a decision of the Court, when constituted so as not to consist of or include a Judge, as if the decision were a decision of justices under the *Justices Act 1902* and Part VIII of that Act applies with such modifications as circumstances require to the appeal.

(2) In subsection (1) “decision” means—

- (a) a decision as to the jurisdiction of the Court;
- (b) a decision allowing a demurrer to a complaint or arresting judgment on a complaint or quashing a complaint;
- (c) a conviction or a finding whether made following a plea of guilty or an admission of the truth of any matter or following trial;
- (d) an acquittal;

- (e) a dismissal of a complaint;
- (f) a decision under section 24 (2) to refrain from imposing any punishment;
- (g) a decision under section 34, 34B, 39A or 39R of the *Child Welfare Act 1947*; and
- (h) a penalty imposed or order made consequent on any such decision, conviction, finding, acquittal, or dismissal,

and whether in relation to a complaint of an indictable offence or not but not a decision relating to bail under the *Bail Act 1982*. ”.

### Section 43 amended

19. Section 43 of the principal Act is amended by repealing subsections (1), (2) and (3) and substituting the following subsections—

“ (1) Subject to this section, an appeal lies from a decision of the Court, when constituted by or so as to include a Judge, to the Full Court.

(2) Subject to subsection (3a), the provisions of Chapter LXIX of *The Criminal Code*, other than sections 688, 693A and 696, apply to an appeal to the Full Court under subsection (1) or under section 41 and for the purposes of such appeals, the Full Court has the powers of the Court of Criminal Appeal.

(3) A convicted person who appeals under subsection (1) against—

- (a) the conviction on a ground which involves a question of fact alone or a question of mixed law and fact;
- (b) a penalty imposed or an order made consequent on the conviction; or
- (c) an order of the Court under section 13J of the *Child Welfare Act 1947*,

may do so only with the leave of the Full Court or in the case of paragraph (a) on a certificate of the Judge who tried the person that it is a fit case for appeal.

(3a) Notwithstanding subsection (2) of this section and section 695 (1) of *The Criminal Code*, for the purposes of an appeal under subsection (1) of this section, the time for appealing is to be taken as being the time for appealing specified in Part VIII of the *Justices Act 1902* or in rules of court made for the purposes of that Part.

(3b) In subsection (1) "decision" has the same definition as in section 41 (2) and includes an order of the court under section 13J of the *Child Welfare Act 1947*. "

### Section 53 amended

20. Section 53 of the principal Act is amended by deleting subsection (5) and inserting the following subsections—

" (5) Every person who holds office as a special magistrate pursuant to section 19 of the *Child Welfare Act 1947* on a full time basis immediately before the repeal of that section has effect, shall, on the commencement of Part 2 of this Act, be deemed to have been appointed a magistrate of the Court on a full time basis under section 10 of this Act, whether or not the person is otherwise eligible for such an appointment under that section.

(5a) Every person who holds office as a special magistrate pursuant to section 19 of the *Child Welfare Act 1947* on other than a full time basis immediately before the repeal of that section has effect, shall, on the commencement of Part 2 of this Act, be deemed to have been appointed a magistrate of the Court on the same basis under section 10 of this Act, whether or not the person is otherwise eligible for such an appointment under that section, but the appointment under this Act shall be for such period as is determined by the Governor. "

## PART 3—CONSEQUENTIAL AND OTHER AMENDMENTS

**Consequential amendments to other Acts**

21. The Acts in Column 1 of the Table are amended in the provision, section or sections opposite them in Column 2 by deleting "(No. 2)" where it occurs.

TABLE

| <i>Column 1</i>   | <i>Column 2.</i>   |
|---|--|
| <i>Bail Act 1982</i>  | s. 21 (2) (b).<br><br>Schedule, Part A,<br>clauses 4 (g) and<br>4 (h).                           |
| <i>Child Welfare Act 1947</i>                                 | s. 4 (1) in the<br>definitions of—<br>"child" and "court".<br><br>s. 141 (1).<br><br>s. 141 (2). |
| <i>Criminal Injuries Compensation Act 1985</i>                | s. 3 (1) in the definition of—<br>"conviction", paragraph (d).<br><br>s. 14 (4).                 |
| <i>Education Act 1928</i>                                     | s. 40.   |
| <i>Family Court Act 1975</i>                                  | s. 27 (3).   |
| <i>Interpretation Act 1984</i>                                | s. 5 in the definition of—<br>"Children's Court".  |
| <i>Offenders Community Corrections Act 1963</i>               | s. 4 in the definition of—<br>"Children's Court".<br><br>s. 8 (a).                               |
| <i>Official Prosecutions<br/>(Defendants' Costs) Act 1973</i> | s. 6 (a) (i).  |
| <i>Stipendiary Magistrates Act 1957</i>                       | s. 4 (7).<br><br>s. 6 (1).   |

**Amendments to *Constitution Acts Amendment Act 1899***

22. Schedule V of the *Constitution Acts Amendment Act 1899*\* is amended—

(a) in Division 1 of Part 1 by—

(i) inserting after “Chairman of Judges or other Judge of the District Court.” the following—

“ President or other Judge or magistrate of the Children’s Court. ”;

and

(ii) deleting “Special Magistrate appointed under the *Child Welfare Act 1947*.”;

and

(b) in Division 1 of Part 2 by inserting after the last item the following—

“ Member of the Children’s Court. ”.

[\*Reprinted as at 16 March 1989 and amended by Acts Nos. 75 of 1988, 19 and 28 of 1989 and 6, 10, 16, 27, 38, 39, 73 and 104 of 1990.]

**Amendments to *Evidence Act 1906***

23. The *Evidence Act 1906*\* is amended—

(a) in section 3, in the definition of “Judge”—

(i) by inserting after “Family Court of Western Australia,” the following—

“ a Judge or magistrate of the Children’s Court of Western Australia, ”; and

(ii) by inserting after "Justices of the Peace" the following—

" and any member or members of the Children's Court of Western Australia ";

(b) by deleting section 11 (3) and substituting the following—

" (3) In subsections (1) and (2), "Judge" does not include—

(a) a Justice of the Peace appointed under section 6 or 9 of the *Justices Act 1902*; or

(b) a member of the Children's Court of Western Australia,

whether sitting alone or with another so appointed. ";

(c) by deleting section 12 (5) and substituting the following—

" (5) In subsections (1) and (4), "Judge" does not include—

(a) a Justice of the Peace appointed under section 6 or 9 of the *Justices Act 1902*; or

(b) a member of the Children's Court of Western Australia,

whether sitting alone or with another so appointed. ";

(d) in section 96 by inserting after "Family Court of Western Australia," the following—

" a Judge, magistrate and member of the Children's Court of Western Australia, "; and

- (e) in section 119 (1), in the definition of "Summary Court", by deleting "a Children's Court established under the *Child Welfare Act 1947*" and substituting the following—

" the Children's Court of Western Australia ".

*[\*Reprinted as at 14 August 1986 and amended by Acts Nos. 81 of 1986, 66 of 1987, 70 of 1988, 34 of 1989 and 47 of 1990.]*

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