

WESTERN AUSTRALIA

ACTS AMENDMENT (CHILDREN'S COURT) ACT

No. 49 of 1988

AN ACT to amend in consequence of the establishment of the Children's Court of Western Australia the *Child Welfare Act 1947*, the *Interpretation Act 1984*, *The Criminal Code*, the *Family Court Act 1975*, the *Justices Act 1902*, the *Road Traffic Act 1974*, the *Official Prosecutions (Defendants' Costs) Act 1973*, the *Education Act 1928*, the *Criminal Injuries Compensation Act 1985*, the *Stipendiary Magistrates Act 1957*, the *Offenders Probation and Parole Act 1963*, the *Bail Act 1982* and the *Child Welfare Amendment Act (No. 2) 1987*.

[Assented to 22 December 1988.]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Children's Court) Act 1988*.

Commencement

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

PART 2—CHILD WELFARE ACT 1947

Principal Act

3. In this Part, the *Child Welfare Act 1947** is referred to as the principal Act.

[*Reprinted as approved 30 August 1984 and amended by Acts Nos. 52, 61 and 121 of 1984, 74 and 98 of 1985, 89 of 1986 and 127 of 1987.]

Section 2 repealed

4. Section 2 of the principal Act is repealed.

Section 4 amended

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

- (a) in the definition of “child”, by deleting “this Act by virtue of the provisions of subsection (2) of section twenty of this Act” and substituting the following—

“ the *Children's Court of Western Australia Act (No. 2) 1988* by virtue of section 19(2) of that Act”;

- (b) by inserting after the definition of “community service order” the following definition—

“ “conditional release order” means an order made by the court under section 39Q for the release of a child sentenced to a term of detention conditional on the child's participation in a conditional release programme; ”;

- (c) by deleting the definition of "court" and substituting the following definition—

“ “court” means the Children’s Court of Western Australia established by the *Children’s Court of Western Australia Act (No. 2) 1988*; ”;

- (d) by inserting after the definition of "Department" the following definitions—

“ “detainee” means a child who is lawfully detained in a detention centre, but does not include a child subject to a direction under section 13J;

“detention centre” means a place declared to be a detention centre by the Minister under section 13A; ”;

- (e) by deleting the definition of "special magistrate"; and

- (f) by deleting the definition of "subsidized centre" or "subsidized facility" and substituting the following definition—

“ “subsidized facility” means a facility, not being a Departmental facility, maintained wholly or in part by contributions from the Consolidated Revenue Fund, and declared to be such a facility under section 14; ”.

Sections 13A to 13K inserted

6. After section 13 of the principal Act, the following sections are inserted—

Detention centres

“ 13A. (1) The Minister may by notice published in the *Gazette*—

- (a) declare any building, enclosure or place to be a detention centre within the meaning and for the purposes of this Act;
- (b) alter the boundaries of a detention centre declared under this subsection.

(2) The Minister may by notice published in the *Gazette* amend or revoke a notice under subsection (1).

(3) Subject to this Act and to the control of the Minister, the Director-General is responsible for the management, control and security of all detention centres and the welfare of all children detained in them.

Visiting justices for detention centres

13B. (1) The Governor may appoint for every detention centre visitors to be known as visiting justices.

(2) A visitor appointed under section 8 shall not carry out the duties of a visiting justice.

(3) Visiting justices shall be appointed from persons who are magistrates or members of the court.

(4) Appointments under this section shall be for a term of 2 years, but a visiting justice may resign at any time by notice in writing delivered to the Governor.

Duties of visiting justice

13C. (1) A visiting justice shall—

- (a) visit and inspect the detention centre for which he is appointed at intervals of not more than 3 months;
- (b) furnish a report in writing to the Minister after each visit and inspection made under paragraph (a);
- (c) make a record of any complaint made by a child or other person and report that complaint to the Director-General or the Minister; and
- (d) communicate directly with the Director-General immediately after a visit made under paragraph (a) if the visiting justice considers it desirable to make a personal report to the Director-General on the visit.

(2) A visiting justice shall attend the detention centre for which he is appointed as soon as practicable upon being notified that a charge of a disciplinary offence has been laid and shall inquire into and dispose of the charge as soon as possible.

Remission

13D. (1) Subject to this Act, a child who is sentenced to a term of detention in a detention centre of not less than 3 days is entitled to remission of one-third of the period of the sentence.

(2) The number of days' remission provided for by this section shall be calculated by reducing the term of the sentence to a number of days, dividing by 3 and disregarding any remainder.

Detention offences

13E. A detainee who—

- (a) assaults a person;
- (b) escapes or prepares or attempts to escape from lawful custody;
- (c) is in possession of or under the influence of drugs not lawfully issued to the detainee or not taken as prescribed;
- (d) is in possession of a weapon or a facsimile of a weapon;
- (e) wilfully breaks, damages or destroys property; or
- (f) behaves in a riotous manner,

is guilty of a detention offence.

Charge of detention offence

13F. A charge of a detention offence alleged to have been committed by a detainee may be made by any officer and shall be brought immediately to the attention of the superintendent who shall, having regard to the nature of the alleged offence and to the alleged circumstances—

- (a) if the detainee so agrees, suspend further action with respect to the charge on condition of the good behaviour of the detainee for a stated period not exceeding 2 months and order the withdrawal of the charge at the end of that period if the condition of good behaviour has been observed;
- (b) direct that the charge be withdrawn or that a further or different charge be laid;

- (c) hear and determine the charge; or
- (d) refer the charge to a visiting justice for hearing and determination.

Hearing of charges

13G. (1) Every charge of a detention offence shall be heard and determined in the presence of the detainee charged in accordance with the prescribed procedure.

(2) The superintendent or visiting justice shall not be bound by the rules of evidence but may admit any evidence considered to be relevant to the charge and may decline to admit repetitious material.

(3) A detainee shall not be represented by a legal practitioner in proceedings before a superintendent or a visiting justice.

Imposition of penalties

13H. (1) Where a detention offence is determined by a superintendent and either the detainee admits the charge or the superintendent finds the charge proved, the superintendent may impose either or both of the following penalties—

- (a) a reprimand;
- (b) forfeiture of not more than 3 days' remission of sentence to which the detainee is entitled under section 13D, but not more than 14 days' remission of sentence in total may be forfeited under this paragraph in respect of detention offences of which the detainee is found guilty by a superintendent.

(2) Where a detention offence is determined by a visiting justice and either the detainee admits the charge or the visiting justice finds the charge proved, the visiting justice may impose either or both of the following penalties—

- (a) a reprimand;
- (b) forfeiture of not more than 28 days' remission of sentence to which the detainee is entitled under section 13D.

(3) The superintendent or visiting justice, as the case may be, may order that the penalty or penalties imposed under subsection (1) or (2) shall be suspended on condition of the good behaviour of

the detainee for a period not exceeding 2 months and if the condition is observed during that period no penalty shall be imposed.

Superintendent's power of early discharge

13I. The superintendent may authorize the discharge of a child from detention in a detention centre at any time during the period of 3 days immediately before the day when the child's sentence is due to expire.

Removal from detention centre to prison

13J. (1) Subject to subsection (2), upon the application of the Director-General the court, when constituted so as to consist of or include a judge, may direct that the unserved portion of a child's sentence of detention in a detention centre shall be served as imprisonment under the *Prisons Act 1981* and deemed for all purposes to be a sentence of imprisonment for the appropriate period.

(2) A direction under subsection (1) may only be made where—

- (a) the court is satisfied that the conduct of the child constitutes a significant risk to the safety or welfare of other children in the detention centre or the staff of the detention centre; or
- (b) the child has attained the age of 18 years and has a substantial period of detention to serve.

Removal from prison to detention centre

13K. (1) Subject to subsection (2), where a child is serving a sentence of imprisonment, the Governor may order that all or a specified part of the unserved remainder of the sentence of imprisonment shall be served as detention in a detention centre and deemed for all purposes to be a sentence of detention in a detention centre for the appropriate period, but no such order may be made in respect of any part of the sentence that will remain unserved when the child reaches the age of 18 years.

(2) Notwithstanding subsection (1), a child in respect of whom an order is made under subsection (1) shall continue to be regarded as a prisoner for the purposes of Part III of the *Offenders Probation and Parole Act 1963*. ”.

Section 18 repealed and substituted

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

Judges, magistrates and members
may visit centres

“ 18. A judge or magistrate of the court, or a member of the court authorized by a judge or magistrate, has the right to enter, visit and inspect a detention centre or a Departmental facility declared to be such under this Act. ”.

Part IV headings amended

8. (1) The heading to Part IV is deleted and the following heading substituted—

“ PART IV—WARDS AND CHILDREN UNDER
DEPARTMENTAL CONTROL. ”.

(2) The heading “*Constitution and Powers of Court.*” is deleted.

**Sections 19, 20, 20B, 20C, 21, 22, 23,
24, 25, 26, 27 and 28 (1) repealed**

9. Sections 19, 20, 20B, 20C, 21, 22, 23, 24, 25, 26, 27 and 28 (1) of the principal Act are repealed.

Section 29 amended

10. Section 29 of the principal Act is amended—

- (a) in subsection (1), by deleting “or to be an uncontrolled child”;
- (b) in subsection (2), by deleting “charge or information, or during any adjournment of the hearing or during any period of remand”;

(c) by inserting after subsection (3) the following subsection—

“ (3aa) The court may order that a child appearing or suspected to be in need of care and protection shall during any adjournment of the hearing—

(a) be allowed to live at home;

(b) be placed, or be directed to remain in the care of, a specified suitable person; or

(c) be placed in a Departmental facility or other suitable place as approved by the Director-General,

and the order of the court may include such provisions relating to custody of and access to the child as the court thinks appropriate. ”; and

(d) by repealing subsection (4).

Section 30 amended

11. Section 30 of the principal Act is amended by repealing subsection (2).

Section 32 amended

12. Section 32 of the principal Act is amended by repealing subsection (4).

Section 33 amended

13. Section 33 of the principal Act is amended—

(a) in subsection (1), by deleting “Subject to section 24 of this Act, where” and substituting the following—

“ Where ”; and

(b) in subsection (2) by deleting “Departmental centre or Departmental facility of an appropriate kind, or such other place as is approved by the Director” and substituting the following—

“ detention centre ”.

Section 34 amended

14. Section 34 of the principal Act is amended in subsection (1)—

(a) by deleting paragraph (a) and substituting the following paragraph—

“ (a) order that the child be detained in a detention centre for such period as the court considers appropriate; or ”;

(b) by deleting paragraphs (c) and (d) and substituting the following paragraphs—

“ (c) on being satisfied that such undertakings as the court may approve have been or will be given by the child or the parent or that such punishment as the court may approve has been, or on the undertaking of a near relative will be, inflicted on the child, dismiss the charge or adjourn it until the punishment is carried out or the undertakings given and fulfilled, as the case requires; or

(d) subject to section 34CA, release the child on probation subject to the supervision of the Department; or ”;

and

(c) by deleting “five hundred dollars” in paragraph (f) and substituting the following—

“ \$1 000 ”.

Section 34A repealed

15. Section 34A of the principal Act is repealed.

Section 34B amended

16. Section 34B of the principal Act is amended in subsection (1) by deleting paragraphs (b) and (c) and substituting the following paragraphs—

“ (b) on being satisfied that such undertakings as the court may approve have been or will be given by the child or the parent or that such punishment as the court may approve has been, or on the undertaking of a near relative will be, inflicted on

the child, dismiss the charge or adjourn it until the punishment is carried out or the undertakings given and fulfilled, as the case requires; or

- (c) subject to section 34CA, release the child on probation subject to the supervision of the Department; or ”.

Section 34C amended

17. Section 34C of the principal Act is amended—

- (a) in paragraph (a) (ii), by deleting “, but in either case the court may order that the child be subject to the supervision of the Department until he attains the age of eighteen years, or during such shorter period as the court may think sufficient”; and
- (b) by deleting paragraphs (b) and (c) and substituting the following paragraphs—
- “ (b) subject to section 34CA, release the child on probation subject to the supervision of the Department; or
- (c) order that the child be detained in a detention centre for such period as the court considers appropriate. ”.

Section 34CA inserted

18. After section 34C of the principal Act the following section is inserted—

Probation orders

“ 34CA. (1) Where a child is found guilty of an offence and the court is of the opinion that it may be appropriate to order the release of the child on probation under this Act, the court must require the Director-General to cause to be prepared and submitted to the court a report concerning the child, the child's suitability for probation and such other issues as the court considers relevant; and the Director-General shall cause every such requirement to be complied with.

(2) Where the Director-General submits a report to the court that a child is suitable for probation or where otherwise requested to do so by the court, the Director-General shall cause to be

submitted to the court in respect of that child a proposed probation agenda containing conditions and undertakings as may be considered appropriate for the benefit of the child.

(3) An order for the release of a child on probation under this Act may be made by the court only where the court considers probation to be suitable for the child in all the circumstances after considering the report submitted to it under subsection (2) and where a probation agenda containing conditions and undertakings considered appropriate for the benefit of the child has been prepared and attached as an annexure to the order.

(4) A probation order under this Act shall have effect for such period not exceeding 6 months as the court shall specify in the order, except that where the court is constituted so as to consist of or include a judge the court may specify a period not exceeding 2 years. ”.

Section 34E amended

19. Section 34E of the principal Act is amended—

(a) by deleting all of subsection (1) except the last sentence and substituting—

“ (1) Where a child is found guilty of an offence with respect to which a fine is imposed on the child or payment of compensation, costs or restitution is ordered, the court, on being satisfied that any parent or guardian of the child has conduced to the commission of the offence by neglecting to exercise due care or control of the child and having regard to the financial circumstances of the child and the parent or guardian, shall order that the fine or compensation, costs or restitution be paid—

(a) by the child; or

(b) by the parent or guardian; or

(c) by both the child and the parent or guardian, in such proportions as the court may determine; or

(d) by the child, but subject to the condition that in default of payment by the child, the fine, compensation, costs or restitution shall be paid by the parent or guardian of the child.

- (b) in subsection (2), by inserting after "parent" the following—
- “ or guardian ”.
- (c) in subsection (3), by deleting “nor shall any such order be made requiring a parent to pay an amount greater than three hundred dollars”.
- (d) in subsection (3), by inserting after “parent”, wherever it occurs, the following—
- “ or guardian ”,
- (e) in subsection (4), by inserting after “sum” the following—
- “ , other than compensation or restitution. ”;
- (f) by repealing subsection (5) and substituting the following subsections—
- “ (5) An order under subsection (1) or (2) may be made against more than one person and where such an order is made the obligations of the persons against whom the order is made shall be joint and several.
- (6) Where the court has made an order for the payment of compensation or restitution under this section, payment shall be made to the clerk of the court for the transmission to the person in whose favour the order was made.
- (7) A person to whom payment of compensation or restitution is to be made under this section may recover any amount in arrear by obtaining from the clerk of the court a certificate given by the clerk as to the amount due under the order to the person and not paid, and upon the filing of the certificate in the office of a clerk of a Local Court, the certificate shall be deemed to be a judgment that requires payment of money duly made by a Local Court and may be enforced accordingly.
- (8) For the purposes of this section, “guardian” in relation to a child includes any person having the custody, care or control of the child for a period other than one which the court considers to be limited or temporary, or who receives any pension, benefit or allowance for or in respect of that child, but does not include the Director-General or any officer of the Department, licensed foster parents, school teachers, or members of the staff of any detention centre or Departmental or other facility. ”.

Section 36 amended

20. Section 36 of the principal Act is amended—

- (a) in subsection (1), by deleting “justices sitting as a children’s court or upon a special magistrate” and substituting the following—

“ court ”; and

- (b) by repealing subsection (3).

Section 39 amended

21. Section 39 of the principal Act is amended by repealing subsection (1).

Section 39A amended

22. Section 39A of the principal Act is amended—

- (a) in subsection (1), by inserting before “without” in paragraph (a) the following—

“ upon recording a conviction or ”; and

- (b) in subsection (3), by deleting “a court” and substituting the following—

“ the court at a specified place ”.

Section 39B amended

23. Section 39B of the principal Act is amended—

- (a) by deleting “a court, or the clerk of a court,” and substituting the following—

“ the court at a place, or the clerk of the court at a place, ”;

- (b) by deleting “some other court” and substituting the following—

“ the court at some other place ”; and

- (c) by deleting “that other court” and substituting the following—

“ the court at that other place ”.

Section 39C amended

24. Section 39C of the principal Act is amended in subsection (1)—

(a) by deleting “make a community service order in respect of a child who has at any time been found guilty of a prescribed offence, and shall not in any case”; and

(b) in paragraph (b) by deleting—

“ but will not have attained the age—

(i) in the case of a child against whom no previous conviction is proved—of 18 years; or

(ii) in any other case—of 17 years ”.

Sections 39Q and 39R inserted

25. After section 39P of the principal Act, the following sections are inserted—

Conditional release orders

“ 39Q. (1) Where a child is found guilty of an offence and sentenced to a term of detention in a detention centre, and the court is of the opinion that it may be appropriate to order the release from detention of the child conditional upon the child's participation in a conditional release programme, the court must require the Director-General to cause to be prepared and submitted to the court a report concerning the availability of a programme, the child's suitability for conditional release for participation in the programme, an outline of the programme proposed to be undertaken by the child and such other issues as the court considers relevant.

(2) The Director-General shall cause every requirement under subsection (1) to be complied with.

(3) An order for the release of a child who is sentenced to detention in a detention centre may be made conditionally upon participation by the child in a conditional release programme and the conditions and undertakings considered appropriate for the benefit of the child shall be set out and attached as an annexure to the order.

(4) If at any time while a conditional release order is in force in respect of a child it appears to the Director-General or other person responsible for the child's participation in the programme that the child has failed to comply with an undertaking or condition of the order or any prescribed requirement, a complaint on oath must be made by or on behalf of the Director-General or that person to the court and the court may issue a warrant for the arrest of the child directing that the child be brought before the court as soon as practicable after arrest.

(5) If after hearing the complaint the court finds that the child has failed to comply with any undertaking or condition of the order or any prescribed requirement, the court may—

- (a) cancel the conditional release order and direct that the child serve that part of the sentence of detention in a detention centre that has not been served; or
- (b) amend the conditions of the conditional release order and permit the child a further opportunity to satisfy the order.

Recording of convictions

39R. (1) If a child is found guilty of an offence and is dealt with in respect of that offence by the court under—

- (a) section 34 (1) (d), 34B (1) (c) or 34C (b);
- (b) section 34 (1) (e) or 34B (1) (d);
- (c) section 34 (1) (f); or
- (d) section 39A,

or by the imposition of a fine, the court need not record a conviction, but the court may in any particular case direct that a conviction be recorded.

(2) If a child is found guilty of an offence and is dealt with in respect of that offence by the court imposing a sentence of imprisonment or detention in a detention centre (whether or not a conditional release order is made), the court must in every case record a conviction. ”.

Section 47 amended

26. Section 47 of the principal Act is amended in subsection (1) by deleting "detained" and substituting the following—

" placed ".

Section 70 amended

27. Section 70 of the principal Act is amended—

(a) in subsection (2)—

(i) by deleting "seven" in paragraph (a) and substituting the following—

" 10 "; and

(ii) by deleting "or a children's court" in paragraph (b) and substituting the following—

" , a children's court or the court ";

and

(b) in subsection (3), by deleting "seven" and substituting the following—

" 10 ".

Section 76 amended

28. Section 76 of the principal Act is amended by deleting "a children's court constituted by a special magistrate who may make such order in the matter as he thinks just" and substituting the following—

" the court which may make such order in the matter as it thinks just ".

Sections 121, 123 and 124 repealed

29. Sections 121, 123 and 124 of the principal Act are repealed.

Section 125 amended

30. Section 125 of the principal Act is amended by deleting "Two hundred dollars or imprisonment with hard labour for three months." and substituting the following—

“ \$2 000 or imprisonment for 3 months. ”.

Sections 126 and 126B repealed

31. Sections 126 and 126B of the principal Act are repealed.

Section 128 repealed and substituted

32. Section 128 of the principal Act is repealed and the following section substituted—

Offence to permit escape

“ 128. An officer or servant of the Department or of the governing authority of a detention centre or a Departmental facility, who negligently or knowingly permits a child to escape from that centre or facility commits an offence.

Penalty: \$5 000 or imprisonment for 12 months, or both. ”.

Section 130 amended

33. Section 130 of the principal Act is amended in subsection (1) by deleting "Five hundred dollars or imprisonment with, or without, hard labour for twelve months." and substituting the following—

“ \$4 000 or imprisonment for 12 months. ”.

Section 141 amended

34. Section 141 of the principal Act is amended—

(a) in subsection (1) by inserting after "this Act" where it first occurs the following—

“ , the *Children's Court of Western Australia Act (No. 2) 1988* or section 666 of *The Criminal Code* ”;

(b) by inserting in subsection (2) after "this Act" the following—

“ , the *Children's Court of Western Australia Act (No. 2) 1988* or section 666 of *The Criminal Code* ”;

and

(c) in subsection (2) by inserting after paragraph (c) the following paragraph—

“ (ca) in the case of a child sentenced to be detained in a detention centre, participating outside the detention centre in a programme approved by the Minister for children so detained; ”.

Section 142 amended

35. Section 142 of the principal Act is amended in subsection (2) by deleting "two hundred dollars" and substituting the following—

“ \$2 000 ”.

Sections 143 and 144 repealed

36. Sections 143 and 144 of the principal Act are repealed.

Section 149 amended

37. Section 149 of the principal Act is amended in subsection (1)—

(a) by inserting in paragraph (a) after "inspectors", the following—

“ , visiting justices ”; and

(b) by inserting after paragraph (c) the following paragraphs—

“ (ca) the custody, maintenance, education, work, employment, and discipline of children sentenced to detention in a detention centre;

(cb) conditional release programmes and the duties and requirements of children participating in such programmes; ”.

Second Schedule amended

38. The Second Schedule of the principal Act is amended by deleting "CENTRES OR" in the heading.

Third and Fifth Schedules repealed

39. The Third Schedule and the Fifth Schedule of the principal Act are repealed.

Minor amendments

40. The provisions of the principal Act specified in column 2 of Schedule 1 are amended to the extent and in the manner specified opposite to those provisions in column 3 of that schedule.

PART 3—INTERPRETATION ACT 1984**Section 5 of *Interpretation Act 1984* amended**

41. Section 5 of the *Interpretation Act 1984** is amended by inserting after the definition of "chief executive officer" the following definition—

“ “Children's Court” means the Children's Court of Western Australia established by the *Children's Court of Western Australia Act (No. 2) 1988*; ”

[*Act No. 12 of 1984 as amended by Acts Nos. 98 of 1985 and 113 of 1987.]

PART 4—THE CRIMINAL CODE**The Code**

42. In this Part "the Code" means *The Criminal Code**.

[*Reprinted as approved 13 December 1983 and amended by Acts Nos. 13, 52 and 121 of 1984, 14, 74 and 119 of 1985, 89 of 1986 and 47, 74, 106, 113 and 129 of 1987.]

Section 18 amended

43. Section 18 of the Code is amended by inserting after "pleasure in a prison" the following; item—

" In the case of a child or young person under the age of 18 years, detention in a detention centre; "

Section 29 amended

44. Section 29 of the Code is amended by deleting "seven" and substituting the following—

" 10 "

Section 665 amended

45. Section 665 of the Code is amended in subsection (2) by deleting "Subject to section 666(2)" and substituting the following—

" Subject to section 13K of the *Child Welfare Act 1947* and to section 666(2) "

Section 666 amended

46. (1) Section 666 of the Code is amended—

(a) by repealing subsection (1) and substituting the following subsection—

" (1) In this section "detention centre" means a detention centre declared as such under the *Child Welfare Act 1947*. ";

(b) in subsection (2) by deleting "an institution" and substituting the following—

" a detention centre ";

(c) in subsection (3) by deleting "an institution" in both places where it occurs and substituting in each place the following—

" a detention centre ";

(d) in subsection (4) by deleting "an institution" and substituting the following—

“ a detention centre ”;

(e) by repealing subsection (5); and

(f) in subsections (6) and (7), by deleting "an institution" in both places where it occurs and substituting in each place the following—

“ a detention centre ”.

Section 669 amended

47. Section 669 of the Code is amended in subsection (1b) by inserting after "1947" the following—

“ or the Children's Court ”

PART 5—FAMILY COURT ACT 1975

Principal Act

48. In this Part the *Family Court Act 1975** is referred to as the principal Act.

[*Reprinted as at 1 March 1988.]

Section 27 amended

49. Section 27 of the principal Act is amended in subsection (3) by deleting "a children's court established under that Act" and substituting the following—

“ the Children's Court of Western Australia established under the *Children's Court of Western Australia Act (No. 2) 1988* ”.

Section 85 amended

50. Section 85 of the principal Act is amended in subsection (1) by deleting "any centre or facility" and substituting the following—

“ any detention centre, Departmental facility or any other facility ”.

PART 6—JUSTICES ACT 1902

Section 12 of *Justices Act 1902* amended

51. Section 12 of the *Justices Act 1902** is amended by inserting after paragraph (d) the following paragraphs—

- “ (da) a Judge of the Children's Court of Western Australia;
(db) a magistrate of the Children's Court of Western Australia; ”.

[*Reprinted as approved 9 November 1984 and amended by Acts Nos. 69 of 1984, 15 and 119 of 1985, 71 and 81 of 1986 and 65 of 1987.]

Section 136B of *Justices Act 1902* amended

52. Section 136B of the *Justices Act 1902* is amended by deleting “children's court by which it might have been heard and determined, in the first instance” and substituting the following—

- “ Children's Court ”.

PART 7—ROAD TRAFFIC ACT 1974

Section 76 of the *Road Traffic Act 1974* amended

53. Section 76 of the *Road Traffic Act 1974** is amended in subsection (10a) by deleting “a Children's Court established under the Child Welfare Act 1947” and substituting the following—

- “ the Children's Court ”.

[*Reprinted as approved 19 July 1983 and amended by Acts Nos. 95 and 102 of 1984, 54 and 89 of 1985, 78 of 1986 and 121 of 1987.]

PART 8—OFFICIAL PROSECUTIONS (DEFENDANTS' COSTS)
ACT 1973**Principal Act**

54. In this Part the *Official Prosecutions (Defendants' Costs) Act 1973** is referred to as the principal Act.

[*Reprinted as approved 23 May 1983 and amended by Act No. 65 of 1987.]

Section 4 amended

55. Section 4 of the principal Act is amended in subsection (1) in the definition of "Summary Court" by deleting ", or a Children's Court established under the Child Welfare Act 1947" and substituting the following—

" or the Children's Court ".

Section 6 amended

56. Section 6 of the principal Act is amended in paragraph (a) (i)—

(a) by deleting "26,"; and

(b) by inserting after "1947," the following—

" section 24 of the *Children's Court of Western Australia Act (No. 2) 1988*, ".

PART 9—EDUCATION ACT 1928**Principal Act**

57. In this Part the *Education Act 1928** is referred to as the principal Act.

[*Reprinted as approved 19 July 1984 and amended by Acts Nos. 94, 118 and 121 of 1984, 98 of 1985, 63 of 1986 and 113 of 1987.

Section 16 amended

58. Section 16 of the principal Act is amended by repealing subsection (4).

Section 17A amended

59. Section 17A of the principal Act is amended in subsection (2) by deleting "a children's court under the Child Welfare Act 1947" and substituting the following—

" the Children's Court ".

Section 17B amended

60. Section 17B of the principal Act is amended in subsection (1) by deleting "a children's court under the Child Welfare Act 1947" and substituting the following—

" the Children's Court ".

Section 18 amended

61. Section 18 of the principal Act is amended in subsection (1) by deleting "a children's court under the Child Welfare Act 1947" and substituting the following—

" the Children's Court ".

Section 20E amended

62. Section 20E of the principal Act is amended by deleting "a children's court" where it occurs in subsections (1) and (5) and substituting in each place where it occurs the following—

" the Children's Court ".

Section 20F amended

63. Section 20F of the principal Act is amended in subsection (2) by deleting "a children's court" and substituting the following—

" the Children's Court ".

Section 40 repealed and substituted

64. Section 40 of the principal Act is repealed and the following section substituted—

Jurisdiction and powers of Children's Court

" 40. Where this Act requires any matter to be heard and determined by the Children's Court or confers on that court any jurisdiction, power or authority, that court may, in respect of the matter, jurisdiction, power or authority exercise, without prejudice to any of the provisions of the *Children's Court of Western Australia Act (No. 2) 1988* or the *Child Welfare Act 1947*, any jurisdiction, power, or authority conferred on it by either of those Acts. "

PART 10—CRIMINAL INJURIES COMPENSATION ACT 1985

Principal Act

65. In this Part the *Criminal Injuries Compensation Act 1985** is referred to as the principal Act.

[*Act No. 73 of 1985.]

Section 3 amended

66. Section 3 of the principal Act is amended in subsection (1) in the definition of "conviction" by deleting paragraph (d) and substituting the following paragraph—

“ (d) a dismissal under section 24 of the *Children's Court of Western Australia Act (No. 2) 1988*; ”.

Section 14 amended

67. Section 14 of the principal Act is amended in subsection (4) by deleting "26 (2) of the *Child Welfare Act 1947* and substituting the following—

“ 24 of the *Children's Court of Western Australia Act (No. 2) 1988* ”.

PART 11—STIPENDIARY MAGISTRATES ACT 1957

Principal Act

68. In this Part, the *Stipendiary Magistrates Act 1957** is referred to as the principal Act.

[*Reprinted as approved 21 January 1981 and amended by Acts Nos. 7 of 1982 and 74 of 1986.]

Section 4 amended

69. Section 4 of the principal Act is amended in subsection (7) by deleting "nineteen of the Child Welfare Act 1947" and substituting the following—

“ 5 of the *Children's Court of Western Australia Act (No. 2) 1988* ”.

Section 6 amended

70. Section 6 of the principal Act is amended—

- (a) in subsection (1), by deleting "nineteen of the Child Welfare Act 1947" and substituting the following—

“ 5 of the *Children's Court of Western Australia Act (No. 2) 1988* ”;

and

- (b) in subsection (2), by deleting "special magistrate" and substituting the following—

“ magistrate of the Children's Court ”.

Section 9 amended

71. Section 9 of the principal Act is amended in paragraph (b) by deleting "industrial or special" and substituting the following—

“ or industrial ”.

PART 12—OFFENDERS PROBATION AND PAROLE ACT 1963**Principal Act**

72. In this Part the *Offenders Probation and Parole Act 1963** is referred to as the principal Act.

[*Reprinted as approved 11 June 1984 and amended by Acts Nos. 52 of 1984, 24 and 118 of 1985 and 47, 113 and 129 of 1987.]

Section 4 amended

73. Section 4 of the principal Act is amended by deleting the definition of "children's court" and substituting the following definition—

“ “Children's Court” means the Children's Court of Western Australia established by the *Children's Court of Western Australia Act (No. 2) 1988*; ”.

Section 5 amended

74. Section 5 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) Part II—

- (a) does not apply to or with respect to a person under the age of 17 years who is convicted of an offence by the Children's Court; and
- (b) shall be read and construed so as not to limit or otherwise affect the provisions of the *Child Welfare Act 1947* as respects the release on probation of a child convicted of an offence by the Children's Court. ”.

Section 8 amended

75. Section 8 of the principal Act is amended in paragraph (a) by deleting "one hundred and twenty-six of the *Child Welfare Act 1947*," and substituting the following—

“ 35 of the *Children's Court of Western Australia Act (No. 2) 1988*, ”.

Section 20T amended

76. Section 20T of the principal Act is amended in the definition of "prisoner" by deleting "institution" and substituting the following—

“ detention centre ”.

PART 13—BAIL ACT 1982

Principal Act

77. In this Part the *Bail Act 1982** is referred to as the principal Act.

[*Act No. 86 of 1982 as amended by Acts Nos 52 and 74 of 1984.

Section 3 amended

78. Section 3 of the principal Act is amended in subsection (1)—

- (a) in the definition of “appropriate judicial officer” by inserting after “Judge of the Supreme Court” wherever it occurs in paragraph (c) the following—

“ or a Judge of the Children’s Court ”;

- (b) in the definition of “authorized community services officer”, by deleting paragraphs (b) and (c) and substituting the following paragraphs—

“ (b) a clerk of the Children’s Court;

(c) a superintendent of a detention centre under the *Child Welfare Act 1947*;

(d) the officer for the time being in charge of any detention centre or Departmental facility under the *Child Welfare Act 1947*; ”;

- (c) in the definition of “court” by deleting paragraph (b) and substituting the following paragraph—

“ (b) the Children’s Court; ”; and

- (d) in the definition of “judicial officer” by inserting after “Justice” the following—

“ and a single member of the Children’s Court ”.

Section 6 amended

79. Section 6 of the principal Act is amended in subsection (3)—

- (a) by inserting after “Judge of the Supreme Court” where it first occurs the following—

“ , a Judge of the Children’s Court ”; and

- (b) by inserting after “Judge of the Supreme Court” where it secondly occurs the following—

“ or a Judge of the Children’s Court, as the case may require ”.

Section 7 amended

80. Section 7 of the principal Act is amended—

- (a) in subsection (2)—

- (i) by inserting after “Judge of the Supreme Court” in the first and second places where it occurs the following—

“ or a Judge of the Children’s Court ”; and

- (ii) by inserting after “Judge of the Supreme Court” in the third place where it occurs the following—

“ or a Judge of the Children’s Court, as the case may require ”;

- (b) in subsection (3)—

- (i) by inserting after “Judge of the Supreme Court” in paragraph (b) the following—

“ or a Judge of the Children’s Court ”; and

- (ii) by inserting after “Judge of the Supreme Court” in the second place where it occurs the following—

“ or a Judge of the Children’s Court, as the case may require ”; and

- (c) in subsection (4) by inserting after “Judge of the Supreme Court” in both places where it occurs the following—

“ or a Judge of the Children’s Court ”.

Section 11 amended

81. Section 11 of the principal Act is amended in subsection (2) (c) by inserting after "Supreme Court" the following—

“ or the Children's Court ”.

Section 14 amended

82. Section 14 of the principal Act is amended by inserting after subsection (4) the following subsection—

“ (5) The powers and duties conferred on a Judge of the Supreme Court by this section may in the case of a child charged with an offence before the Children's Court also be exercised by a Judge of the Children's Court. ”.

Section 15 amended

83. Section 15 of the principal Act is amended in subsection (1) by inserting after "Supreme Court" the following—

“ , or in the case of a defendant who is a child by a Judge of the Children's Court ”.

Section 21 amended

84. Section 21 of the principal Act is amended in subsection (2) by deleting paragraph (b) and substituting the following paragraph—

“ (b) the Director-General of the Department for Community Services or other officer of that Department to be present and participate in proceedings concerning a child pursuant to the *Children's Court of Western Australia Act (No. 2) 1988*. ”.

Section 26 amended

85. Section 26 of the principal Act is amended—

(a) in subsection (1) by inserting after "Justice" the following—

“ or a member of the Children's Court ”;

- (b) in subsection (2) by inserting after "Justice" the following—
 - “ or a member of the Children's Court ”; and
- (c) in subsection (4) by inserting after "Supreme Court" the following—
 - “ or the Children's Court ”.

Section 29 amended

86. Section 29 of the principal Act is amended—

- (a) by inserting after paragraph (d) the following paragraph—
 - “ (da) a clerk of the Children's Court; ”; and
- (b) in paragraph (g) by inserting after "District Court" the following—
 - “ or of the Children's Court ”.

Section 31 amended

87. Section 31 of the principal Act is amended in subsection (2)—

- (a) by inserting after "Judge of the Supreme Court" in paragraph (c) (i) the following—
 - “ or a Judge of the Children's Court ”; and
- (b) by inserting after "Judge of the Supreme Court" in paragraph (d) (i) the following—
 - “ or a Judge of the Children's Court ”.

Section 36 amended

88. Section 36 of the principal Act is amended in subsection (2) by inserting after "District Court" the following—

- “ or of the Children's Court ”.

Section 66A amended

89. Section 66A of the principal Act is amended—

(a) by inserting after the section designation "66A." the subsection designation "(1)"; and

(b) by inserting the following subsection—

" (2) The superintendent of a detention centre may, either generally or as otherwise provided by the instrument of delegation, by instrument signed by him, delegate to an officer of the Department for Community Services any function conferred on him by or under this Act, other than this power of delegation. "

Schedule amended

90. The Schedule to the principal Act is amended—

(a) in Part A—

(i) by inserting, before paragraph (c) in the second column of clause 1 the following—

" (ba) a member of the Children's Court; and "

(ii) in clause 4—

(A) by deleting "any appeal or rehearing" in the first column and substituting the following—

" any appeal, rehearing, or reconsideration "

(B) by deleting paragraph (g), and the entry opposite to that paragraph and substituting the following—

" (g) for a rehearing of any proceedings under section 28 of the <i>Children's Court of Western Australia Act (No. 2) 1988.</i>	The Children's Court
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(h) for the reconsideration of an order under section 40 of the <i>Children's Court of Western Australia Act (No. 2) 1988.</i>	The Children's Court constituted by the President. "
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(b) in Part B, in clause 3—

(i) by inserting after “a Justice” in both places where it occurs the following—

“ or a member of the Children's Court ”; and

(ii) by inserting after “another Justice” the following—

“ or another member of the Children's Court ”.

and

(c) in Part C by inserting after “Petty Sessions” in clause 8 the following—

“ or as a member of the Children's Court”.

PART 14—*CHILD WELFARE AMENDMENT ACT (NO. 2) 1987*

**Section 8 of the
Child Welfare Amendment Act (No. 2) 1987
amended**

91. Section 8 of the *Child Welfare Amendment Act (No. 2) 1987** is amended in new section 23A—

(a) by deleting paragraph (a) in the definition of “proceedings”; and

(b) by deleting paragraph (a) in the definition of “respondent”.

[*Act No. 127 of 1987.]

SCHEDULE 1

(Section 40)

MINOR AMENDMENTS TO *CHILD WELFARE ACT 1947*

<i>Column 1 Item</i>	<i>Column 2 Provision amended</i>	<i>Column 3 Amendment</i>
1.	Section 4 (1)	(1) In the definition of “child in need of care and protection”, delete “subsidized centre or”. (2) In the definition of “governing authority” delete “subsidized centre of”.
2.	Section 4 (3)	Delete “centre or”.
3.	Section 8	Delete “centres and Department”.
4.	Section 10	In subsection (2)— (a) in paragraph (a) by deleting “centre or other”; and (b) in paragraph (b) by deleting “centre or” in both places where it occurs.
5.	Heading to Part III	Delete “CENTRES AND”.

Column 1 Item	Column 2 Provision amended	Column 3 Amendment
6.	Section 13	(1) In subsection (1), delete " , training facility or other thing to be a Departmental centre or" and substitute the following— " or other thing to be a " . (2) In subsection (2), delete "centre or" in both places where it occurs.
7.	Section 14	(1) In subsection (1), delete "subsidized centre or" and "voluntary centre or". (2) In subsection (2), delete "centre or" wherever it occurs.
8.	Section 15	(3) In subsection (3), delete "centre or".
9.	Section 16	(1) Delete "centres and".
10.	Section 17	(2) Delete "centres or". Delete "centre or" wherever it occurs.
11.	Section 18A	Delete "centre or" wherever it occurs.
12.	Section 29 (2) (c)	Delete "Departmental centre or".
13.	Section 31	Delete "Departmental centre or".
14.	Section 35	(1) In subsection (1), delete "Departmental centre or appropriate Departmental facility" in both places where it occurs and substitute in each place the following— " detention centre " . (2) In subsection (3) (a), insert after "order of" the following— " the court " . (3) In subsection (8), delete "Departmental centre or an appropriate Departmental facility" and substitute the following— " detention centre " .
15.	Section 36 (2)	Delete "Departmental centre or facility" in both places where it occurs and substitute in each place the following— " detention centre " .
16.	Section 37	Delete "Departmental centre or Departmental facility" and substitute the following— " detention centre " .
17.	Section 38 (1)	Delete "a court" and substitute the following— " the court " .
18.	Section 39A (1), (2), (2a) and (7)	Delete "a court" wherever it occurs and substitute the following— " the court " .
19.	Section 39B (1)	Delete "a court" in both places where it occurs and substitute in each case the following— " the court " .
20.	Section 39C (1)	Delete "A court" and substitute the following— " The court " .
21.	Section 39C (4)	Delete "a court" and substitute the following— " the court " .
22.	Section 39D	Delete "A court" and substitute the following— " The court " .
23.	Section 39F	Delete "a court" in both places where it occurs and substitute in each case the following— " the court " .
24.	Section 39G (1)	Delete "a court" and substitute the following— " the court " .

Column 1 Item	Column 2 Provision amended	Column 3 Amendment
25.	Section 39G (4)	Delete "A court" and substitute the following— " The court ".
26.	Section 39J	(1) Delete "a court" and substitute the following— " the court " . (2) Delete "the supervising court" in both places where it occurs and substitute in each case the following— " the court " . (2) In subsection (4), delete "A supervising Court" and substitute the following— " The court " .
27.	Section 39K	Delete "a court" in both places where it occurs and substitute in each case the following— " the court " .
28.	Section 39L (1)	Delete "a court" and substitute the following— " the court " .
29.	Section 39M	Delete "a court" and substitute the following— " the court " .
30.	Section 40 (3) (c)	Delete "a court" and substitute the following— " the court " .
31.	Section 45	Delete "Departmental or other centre or facility" and substitute the following— "detention centre or Departmental or other facility " .
32.	Section 46	Delete "Departmental" and substitute the following— " detention centre, Departmental facility " .
33.	Section 47	(1) in subsection (1), delete "centre or". (2) In subsection (2), delete "a children's court" and substitute the following— " the court " .
34.	Section 47A (5)	Delete "a children's court" and substitute the following— " the court " .
35.	Section 47B (2)	Delete "a children's court" and substitute the following— " the court " .
36.	Section 47C (3)	Delete "the children's court" and substitute the following— " the court " .
37.	Section 47D (2))	Delete "a children's court" and substitute the following— " the court " .
38.	Section 65	Delete "subsidized centre or".
39.	Section 66D (1)	Delete "a children's court" and substitute the following— " the court " .
40.	Section 70 (1)	Delete "the children's court and substitute the following— " the court " .
41.	Section 70 (2)	Delete "a children's court" where it occurs in paragraphs (d) (ii) and (f) and substitute in each case the following— " the court " . Delete "the children's court" in paragraph (e) and substitute the following— " the court " .

Column 1 Item	Column 2 Provision amended	Column 3 Amendment
42.	Section 70 (3)	Delete "a children's court" and substitute the following— " the court ".
43.	Section 71 (5)	Delete "a children's court" and substitute the following— " the court ".
44.	Section 73 (3) and (4)	Delete "a court" in both places where it occurs and substitute in each case the following— " the court ".
45.	Section 74 (1) (b) and (4)	Delete "a children's court" in both places where it occurs and substitute in each case the following— " the court ".
46.	Section 74 (3)	Delete "a children's court and the children's court" and substitute the following— " the court which ".
47.	Section 126A (1)	Delete "the children's court" and substitute the following— " the court ".
48.	Section 127	(1) In paragraph (a), delete "Departmental" where it first occurs and substitute the following— " detention " . (2) In paragraph (b), delete "Departmental" where it first occurs and substitute the following— " detention " .
49.	Section 129	Delete "Departmental" and substitute the following— " detention centre, a Departmental facility " .
50.	Section 130A (1)	Delete "a children's court" and substitute the following— " the court " .
51.	Section 138B (2) and (4)	Delete "a children's court" in both places where it occurs and substitute in each case the following— " the court " .
52.	Section 141	(1) In subsection (1) (b), delete "Departmental" where it first occurs and substitute the following— " detention " . (2) In subsection (2) (d), delete "Departmental" where it first occurs and substitute the following— " detention " .
53.	Section 149 (1)	(1) In paragraph (b), delete "Departmental" and substitute the following— " detention centres, Departmental facilities " . (2) In paragraph (d), delete "Departmental" and substitute the following— " detention centres, Departmental facilities " . (3) In paragraph (h), delete "Departmental" and substitute the following— " detention centres, Departmental facilities " .