

CHILD WELFARE.

No. 57 of 1982.

AN ACT to amend the Child Welfare Act 1947-1982.

[Assented to 22 September 1982.]

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

1. (1) This Act may be cited as the *Child Welfare Amendment Act 1982*.

Short title
and citation.

(2) In this Act the Child Welfare Act 1947-1982 is referred to as the principal Act.

Reprinted
as approved
11 November
1977 and
amended by
Acts Nos. 77
of 1979 and 20
of 1982.

(3) The principal Act as amended by this Act may be cited as the Child Welfare Act 1947-1982.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Section 4
amended.

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

(a) by deleting “Act.” at the end of the subsection and substituting the following—

“ Act; ” ; and

(b) by inserting, in their appropriate alphabetical positions, the following definitions—

“community service order” means an order made under section 39A (1) of this Act;

“overseer”, in relation to a community service order, means an overseer appointed under and in accordance with the regulations for the purposes of the provisions of this Act relating to community service orders;

“prescribed offence”, in relation to the power of a court to make a community service order, means—

(a) an offence against a section of The Criminal Code specified in the first column of the Sixth Schedule but limited, in the case of an offence against section 390B (b) of that Code, to that offence when committed in the circumstances specified in the second column;

(b) an offence of which an element is assault or injury to the person or an intent or attempt to commit an assault or to injure the person; or

(c) an offence prescribed by regulation for the purposes of this definition;

“prescribed requirement”, in relation to a community service order, means a requirement imposed by this Act on a child in respect of whom the community service order is made;

“relevant officer”, in relation to a community service order, means the officer for the time being assigned under section 39A (6) of this Act to be the relevant officer in respect of that community service order;

“the regulations”, in relation to a community service order, means the regulations made for the purposes of the provisions of this Act relating to community service orders;

“the supervising court”, in relation to a community service order, means the court that is, pursuant to section 39A (3) of this Act, the supervising court in respect of that community service order;

“work”, in relation to a community service order, includes any form of work, service, or activity. .

4. Section 6 of the principal Act is amended— Section 6
amended.

(a) by repealing subsection (2) and substituting the following subsections—

“ (1a) Where this Act confers or imposes any power, function, or duty on the Director, that power, function, or duty may be exercised or performed by the person appointed under section 8 of the Community Welfare Act 1972 to be the deputy of the Director.

(2) The Minister may appoint any person who is an officer of the Department to exercise or perform, during any absence, illness, or incapacity of the Director or the person appointed under section 8 of the Community Welfare Act 1972 to be the deputy of the Director, all the powers, functions, and duties conferred or imposed on the Director by this Act, or such of those powers, functions, and duties as may be specified in his appointment under this subsection and, during any such absence, illness, or incapacity, a person appointed under this subsection has, and may exercise or perform, such powers, functions, and duties as that person is appointed under this subsection to exercise or perform. ” ; and

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

“ (4) Where, under this Act, the exercise of a power or the performance of a function or duty by the Director is dependent upon the opinion, belief, or state of mind of the Director in relation to a matter and that power, function, or duty may be exercised or performed by another person pursuant to subsection (1a) or (2) of this section, that power, function, or duty may be exercised or performed by that other person upon the opinion, belief, or state of mind of that other person in relation to that matter. ” .

Section 9A
amended.

5. Section 9A of the principal Act is amended—

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

“ (1) The Minister may from time to time, by writing under his hand either generally or in relation to a specified

person, case, or circumstance, delegate to the Director, to the person appointed under section 8 of the Community Welfare Act 1972 to be the deputy of the Director, to a person appointed under section 6 (2) of this Act, or to each of them, as he thinks fit, all or any of—

- (a) the powers exercisable by him under section 10 (2) (b), section 29 (1), section 34D (2), sections 47, 47A, 47B, 47C, 47D, 54, 55, 65, 66, 66A, 66B, 110, 122, and 138B of this Act; and
- (b) the powers exercisable by him in respect of a child under section 49 of this Act in so far as they are to be exercised in accordance with the consent of each parent or guardian of the child whose whereabouts are known or can be ascertained by reasonable inquiry and, where the child has attained the age of 14 years, of the child. ” ;

(b) in subsection (2)—

- (i) by inserting after “Subject to” the following—

“ section 9B of this Act and to ” ; and

- (ii) by inserting after “delegation” the following—

“ and, where, under this Act, the exercise of a power by the Minister is dependent upon the opinion, belief, or state of mind of the Minister in relation to a matter and that power is delegated under this section, that

power may be exercised by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter ” ;

and

(c) by repealing subsection (4) and substituting the following subsection—

“ (4) Where the Minister by whom a delegation was made under this section has not vacated his office but another Minister is for the time being discharging the duties of that office, the delegation has effect as if that other Minister were the Minister by whom the delegation was made. ” .

Section 9B
inserted.

6. After section 9A of the principal Act the following section is inserted—

Review of
decision of
delegate.

“ 9B. (1) Where a person makes a decision in relation to a child pursuant to a power conferred on the Minister under a provision specified in subsection (6) of this section and delegated to that person under section 9A of this Act—

- (a) the child, if he has attained the age of 14 years;
- (b) a parent or, where the Director is not the guardian, the guardian, of the child;
- (c) any other person standing *in loco parentis* to the child; or
- (d) any other person who satisfies the Minister that his paramount interest in the matter is the welfare of the child,

may request the Minister to review the decision and the Minister shall, on receiving such request, or in any case may of his own motion, review the decision and thereupon confirm, vary, or reverse the decision.

(2) A person making a decision in respect of which a right to request a review is conferred by subsection (1) of this section shall give to each person on whom a right to request a review is conferred by paragraph (a), (b), or (c) of that subsection whose whereabouts are known to, or can be ascertained by reasonable inquiry by, the delegate notice in writing of the right to request a review so conferred.

(3) The notice required by subsection (2) of this section to be given to a person may be given—

- (a) by delivering it to him personally;
- (b) by leaving it for him at his usual or last known place of abode, or, if he is a principal of a business, at his usual or last known place of business;
or
- (c) by posting the notice (under pre-paid post) as a letter addressed to him at a place referred to in paragraph (b) of this subsection.

(4) Nothing in this section prejudices any right of appeal that a person may have, but where the right of appeal is exercisable in respect of a decision made pursuant to a power conferred on the Minister under a provision specified in subsection (6) of this section and delegated under section 9A of this Act it shall not be exercised until any right to request a review of the decision under this section has been exhausted.

(5) Where upon a review of the decision under this section the Minister varies or reverses a decision made pursuant to a power delegated under section 9A of this Act the validity of anything done for the purposes of or pursuant to the decision is not affected, but the Minister may direct that such measures be taken in relation to anything so done as in the circumstances he thinks fit and effect shall be given to any such direction.

(6) The provisions in respect of which subsection (1) of this section applies are section 34D (2) and sections 47, 47A, 47B, 47C, 47D, 49, 66A and 66B of this Act. ” .

Section 20
amended.

7. Section 20 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

“ (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—

(a) a person before the court on a complaint of an offence alleged to have been committed by that person when a child—for all the purposes of any proceedings in respect of that offence; and

(b) a person in respect of whom a community service order made under this Act remains in force pursuant to section 39F of this Act—for all the purposes of discharging the community service order or otherwise disposing of the matter in respect of which the community service order was made. ” .

8. The heading before section 29 of the principal Act is deleted and the following heading is substituted—

Heading substituted.

“ *Children in Need of Care and Protection and Uncontrolled Children.* ” .

9. Section 29 of the principal Act is amended in subsection (1) by inserting after “protection” the following—

Section 29 amended.

“ or to be an uncontrolled child ” .

10. Section 30 of the principal Act is amended in subsection (1) by deleting “; or

Section 30 amended.

(c) released on such conditions, if any, as the court may order and in such case the child shall be subject to the supervision of the Department ” .

11. Section 31 of the principal Act is amended by deleting “the care of” and inserting after “committed to” the following—

Section 31 amended.

“ the care of ” .

12. The heading before section 32 of the principal Act is deleted.

Heading deleted.

13. Section 34 of the principal Act is amended in subsection (3)—

Section 34 amended.

(a) by deleting “in no case shall any default order” and substituting the following—

“ a default order shall not ” ; and

(b) by inserting after “education” the following—

“ unless—

(a) it is a community service order;

or

(b) it is an order made under section 36 (3) or (4), or section 39G (3)

(b) (ii) of this Act ” .

Section 34B
amended.

14. Section 34B of the principal Act is amended in subsection (2)—

(a) by deleting “in no case shall any default order” and substituting the following—

“ a default order shall not ” ; and

(b) by inserting after “education” the following—

“ unless—

(a) it is a community service order;

or

(b) it is an order made under section 36 (3) or (4), or section 39G (3)

(b) (ii) of this Act ” .

Section 36
amended.

15. Section 36 of the principal Act is amended by inserting after subsection (2) the following subsections—

“ (3) Where a child—

(a) who has attained the age of 12 years;

and

(b) in respect of whom a community service order may not, by reason of the child having at any time been found guilty of a prescribed offence, be made,

defaults in the payment of a fine imposed by a court under section 34 (1) of this Act, or under the provisions of any other Act, and no order has been made for detention in default of the payment of the fine, the court may issue a summons requiring the child to appear before the court and, in default of the child so appearing, issue a warrant ordering the child to be apprehended and be brought before the court and, upon the child so appearing or being so brought before the court, the court shall, unless sufficient cause to the contrary is shown, make an order for the detention of the child in respect of the default and issue a warrant of commitment accordingly or make an order for the detention of the child to take effect if, after such further time as may be fixed by the order, the child is still in default.

(4) Where a child, in respect of whom a community service order may, subject to the consent of the child, be made, defaults in the payment of a fine imposed by a court under section 34 (1) of this Act, or under the provisions of any other Act, the court may, whether or not any order has been made for detention in default of the payment of the fine, issue a summons requiring the child to appear before the court and, in default of the child so appearing, issue a warrant ordering the child to be apprehended and be brought before the court and, upon the child so appearing or being so brought before the court, the court may invite the child to consent to the making of a community service order by the court in respect of the fine and, where the child declines to so consent and an order has not been made for detention in default of the payment of the fine, the court shall, unless sufficient cause to the contrary is shown, make an order for the detention of the child in respect of the default and issue a warrant of commitment accordingly or make

an order for the detention of the child to take effect if, after such further time as may be fixed by the order, the child is still in default.

(5) Where a child appears or is brought before a court pursuant to subsection (4) of this section and the court makes a community service order under section 39A (1) (b) of this Act for the performance of unpaid work as an alternative to payment of a fine imposed—

(a) notwithstanding any order that has been made for detention in default of payment of the fine, no warrant of commitment for the default shall be issued except in accordance with section 39G (3) of this Act; and

(b) the discharge of the community service order—

(i) by performance of the work; or

(ii) by a court pursuant to section 39J of this Act,

shall be taken to be satisfaction of the fine. ” .

Sections 39A
to 39P
inserted.

16. After section 39 of the principal Act the following sections are inserted—

Community
service
orders.

“ 39A. (1) Subject to sections 39C and 39D of this Act—

(a) where a child is before a court and may be dealt with under section 34 (1), or section 34B (1), of this Act the court may, without proceeding to conviction, make an order requiring the child to perform unpaid work, in accordance with this section and section 39B to 39P of this Act and the regulations, for such number of hours as may, subject to section 39D of this Act, be specified in the order;

- (b) where a child appears or is brought before a court pursuant to section 36 (4) of this Act, the court may make an order requiring the child to perform unpaid work, in accordance with this section and sections 39B to 39P of this Act and the regulations, for such number of hours as may, subject to section 39D of this Act, be specified in the order.

(2) Subsection (1) of this section applies to—

- (a) a child who is before a court and may be dealt with under section 34 (1), or section 34B (1), of this Act;

or

- (b) a child who appears or is brought before a court pursuant to section 36 (4) of this Act by reason of a default in the payment of a fine,

notwithstanding that the offence for which the child is before the court was committed, or the default occurred, as the case may be, before the day of the coming into operation of section 16 of the Child Welfare Amendment Act 1982.

(3) A community service order shall appoint a court being—

- (a) the court nearest to the place where the child in respect of whom the community service order is made intends to reside; or
- (b) the court that the court making the community service order deems most convenient in the circumstances,

to be the supervising court in respect of the community service order, and the court so appointed, or such other court as is appointed

pursuant to section 39B of this Act, shall for the purposes of this Act be the supervising court in respect of that community service order.

(4) A community service order shall require the child in respect of whom it is made to present himself in person at a place specified in the community service order, to an officer of the Department so specified, at or within such time (if any) as is so specified.

(5) The court by which a community service order is made shall cause the community service order to be evidenced in writing and, as soon as practicable after the community service order is made, shall—

- (a) cause a copy of the community service order to be given to the child in respect of whom it is made;
- (b) cause a copy of the community service order to be sent to the Department; and
- (c) where the court is not itself the supervising court, cause a copy of the community service order to be sent to the clerk of the supervising court, together with such documents and information relating to the child in respect of whom, and the offence in respect of which, the community service order is made as the court making the community service order considers likely to be of assistance to the supervising court.

(6) The Department shall assign an officer of the Department to be the relevant officer in respect of a community service order and may from time to time so assign another officer in place of the officer previously assigned.

(7) Where a court makes a community service order under subsection (1) (a) of this section in respect of a child found guilty of an offence—

(a) subject to paragraph (b) of this subsection, for the purpose of the making, under this or any other Act, of any order that may be, or is required to be, made by a court upon convicting a person of such an offence (but not for any other purpose), the making of the community service order is deemed to be a conviction of the offence in respect of which the community service order is made;

(b) a court shall not sentence the child to imprisonment or impose a fine on the child or deal with him under section 34 (1) or section 34B (1) of this Act, for the offence in respect of which the community service order was made except pursuant to section 39G (3) or section 39J (2) of this Act.

(8) Where a child discharges a community service order made under subsection (1) (a) of this section by performing work, in accordance with section 39E of this Act, for the number of hours specified in the community service order, the relevant officer shall give to the supervising court notice in writing, a copy of which is sent to the child, that the community service order has been so discharged and where the supervising court—

(a) receives notice given pursuant to this subsection that the community service order has been discharged; or

(b) itself discharges the community service order pursuant to section 39J (1) (a) of this Act,

the supervising court shall, without proceeding to conviction, and, in the circumstances referred to in paragraph (a) of this subsection, without requiring the attendance of any party to the proceedings, dismiss the complaint of the offence in respect of which the community service order was made, but the dismissal of the complaint shall not be taken to affect any other order made, or disqualification imposed, by the court that made the community service order.

Substitution
of new
supervising
court.

39B. (1) Where a court, or the clerk of a court, that is the supervising court in respect of a community service order is satisfied that a child has changed or proposes to change his place of residence and that, as a result of that change, some other court is or will be the nearest court to the new place of residence of the child or the most convenient in the circumstances of the case, the supervising court or the clerk of the supervising court may, from a date to be endorsed on the community service order, appoint that other court as the supervising court.

(2) Where under subsection (1) of this section a court is appointed as the supervising court in respect of a community service order the clerk by whom the appointment is made shall endorse the community service order to that effect and send to the new supervising court a copy of the endorsed community service order, together with such documents and information relating to the child in respect of whom, and the offence in respect of which, the community service order is made, as the clerk considers likely to be of assistance to that court.

Circum-
stances in
which a
community
service order
may be made.

39C. (1) A court shall not make a community service order in respect of a child who has at any time been found guilty of a pre-

scribed offence, and shall not in any case make a community service order requiring the performance of work by a child unless—

- (a) the child consents to the making of the community service order;
- (b) at all times during which the work is to be performed, the child will have attained the age of 12 years 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;
- (c) the court has been notified by the Department that arrangements exist for children who reside in the area in which the child intends to reside to perform work under a community service order; and
- (d) the court is satisfied, after considering a report from the Department about the child and the circumstances of the child and, if the court thinks necessary, hearing an officer of the Department, that—
 - (i) the child is a suitable child to perform work under a community service order; and
 - (ii) work of a suitable nature can be provided for the child under the arrangements mentioned in paragraph (c) of this subsection if a community service order is made.

(2) For the purposes of subsection (1) of this section the court may, in order to obtain—

- (a) any notification or report from the Department; or

- (b) the attendance before the court of any officer of the Department,

adjourn the hearing of the proceedings and, where it does so, shall release the child on bail, with or without sureties, to appear at the adjourned hearing.

(3) Before making a community service order the court shall explain, or cause to be explained, to the child in respect of whom it is proposed to make the community service order, in language likely to be readily understood by the child—

- (a) the purpose and effect of the community service order;
- (b) the consequences that may follow if the child fails to comply with the community service order or with any of the prescribed requirements; and
- (c) that the community service order may be reviewed on the application of the child or of the relevant officer.

(4) Where a court has made a community service order in respect of a child, the child and any parent, guardian, or other person *in loco parentis* who was present when the community service order was made shall, upon request, sign a written acknowledgement endorsed on a copy of the community service order to the effect that the community service order was made with the consent of the child and the purpose and effect of the community service order are understood, but the fact that in a particular case such an acknowledgement may not have been signed shall not be taken to postpone or otherwise alter the effect of the community service order.

39D. A court shall not make a community service order requiring a child to perform work where, after the making of that community service order, the aggregate number of hours of work required to be performed by the child under that community service order, or under that and any other community service order, would be—

Hours of service under community service orders.

- (a) less than the number prescribed for the purposes of this paragraph, or if no number is so prescribed, 10; or
- (b) more than the number prescribed for the purposes of this paragraph, or if no number is so prescribed, 70.

39E. (1) A child in respect of whom a community service order is in force shall—

Obligations of offender.

- (a) perform such work as the relevant officer directs at such times as the relevant officer directs for the number of hours specified in the community service order;
- (b) perform that work in a satisfactory manner;
- (c) while performing that work comply with any reasonable direction of an overseer; and
- (d) inform the relevant officer of any change in his address.

(2) Where a child in respect of whom a community service order is in force fails to comply with the community service order or with any prescribed requirement, the relevant officer shall make a complaint of the failure under section 39G (1) of this Act unless the relevant officer is satisfied that, having regard to the circumstances and gravity of the failure, it would be inappropriate to make such a complaint.

(3) In giving directions to a child under subsection (1) of this section the relevant officer and any overseer shall, so far as practicable, avoid—

- (a) any conflict with the religious beliefs of the child; or
- (b) any interference with the times, if any, at which the child normally works or attends a school or other educational establishment.

(4) A child in respect of whom a community service order is in force shall perform the number of hours of work specified in the community service order during the period of 3 months commencing from the date of the community service order or such extension of that period as the court may allow under section 39G or 39H of this Act, but that period shall not be extended under section 39G or 39H of this Act so as to permit work to be performed under the community service order by the child at a time when he has attained the maximum age set out in section 39C (1) (b) of this Act.

Duration of
community
service
order.

39F. (1) A community service order made under section 39A (1) (a) of this Act in respect of a child remains in force until—

- (a) the community service order is discharged by the child performing work, in accordance with section 39E of this Act, for the number of hours specified in the community service order;
- (b) the community service order is discharged, pursuant to section 39J (1) (a) of this Act, by a court; or
- (c) the child is dealt with, under section 39G (3) (a) or section 39J (2) of this Act, for the offence in respect of which the community service order was made.

(2) A community service order made under section 39A (1) (b) of this Act in respect of a child remains in force until—

- (a) the community service order is discharged by the child performing work, in accordance with section 39E of this Act, for the number of hours specified in the community service order;
- (b) the community service order is discharged, pursuant to section 39J (1) (a) of this Act, by a court;
- (c) the fine in respect of which the community service order was made is otherwise satisfied; or
- (d) the child serves the period of detention specified in a warrant of commitment issued pursuant to an order for detention in default of payment of the fine, or such period as reduced in accordance with section 39J (3) (b) of this Act or section 167 (4) of the Justices Act 1902.

39G. (1) If at any time while a community service order is in force in respect of a child it appears on complaint in writing to a court that the child has failed to comply with the community service order or with any prescribed requirement, the court may issue a summons requiring the child to appear, at the time specified in the summons, at the court by which the community service order was made or at the supervising court, or may, if the complaint is in writing and on oath, issue a warrant for the arrest of the child directing that the child be brought before one of those courts as soon as practicable after his arrest.

Breach of requirements of, or relating to, community service order.

(2) The court before which the child is required to appear or is directed to be brought pursuant to subsection (1) of this section has jurisdiction to exercise the powers conferred on it by this section notwithstanding any provision of any other Act.

(3) If the court before which a child appears or is brought pursuant to subsection (1) of this section finds that the child has failed to comply with any requirement of the community service order or with any prescribed requirement, that court may, subject to subsection (4) of this section, with or without extending, in relation to the community service order, the period of 3 months specified in section 39E (4) of this Act, or that period as previously extended under this Act, increase the number of hours for which the child is required to perform work under the community service order or may—

- (a) where the community service order was made under section 39A (1) (a) of this Act—deal with the child for the offence in respect of which the community service order was made in any manner in which the court by which the community service order was made could have dealt with him at the time it found him guilty of that offence;
- (b) where the community service order was made under section 39A (1) (b) of this Act upon default in the payment of a fine—
 - (i) if any order has been made for detention in default of payment of the fine—issue a warrant of commitment for the default; or
 - (ii) if an order has not been made for detention in default of payment of the fine—make an

order for the detention of the child in respect of the default and issue a warrant of commitment accordingly.

(4) A court shall not increase the number of hours for which a child is required to perform work under a community service order in circumstances in which a court would be prevented by section 39C (1) of this Act from making a community service order nor so as to require the performance of work where, or to an extent that, section 39D (b) would prevent the making of such a requirement in a community service order.

(5) A complaint under this section that a child has failed to comply with a requirement of a community service order, or with a prescribed requirement, may aver that the child is the child in respect of whom the relevant community service order was made, and in any proceedings under this section upon a complaint containing such an averment the child may be asked by the court before which he appears or is brought whether he was found guilty of the offence in respect of which the relevant community service order was made or, as the case may be, whether the fine in respect of which the community service order was made was imposed on him and whether he defaulted in the payment of the fine, and if he admits that he was so found guilty, or that the fine was imposed on him and he defaulted in the payment of the fine, as the case may be, no further or other proof of the fact or facts so admitted is required.

39H. Subject to section 39E (4) of this Act, where a community service order is in force in respect of a child and, on the application of the child or the relevant officer, it appears to the supervising court that it would be in the interests of justice to do so having regard to circumstances that have arisen since

Extension of
time for
performing
work.

the community service order was made, the court may extend, in relation to the community service order, the period of 3 months specified in that section.

Discharge
and
amendment
of com-
munity
service
orders and
substitution
of other
penalties
or orders.

39J. (1) Where a community service order is in force in respect of a child and, on the application of the child or the relevant officer, it appears to the supervising court that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the community service order was made, the court may—

- (a) discharge the community service order; or
- (b) reduce the number of hours for which the child is required to perform work under the community service order.

(2) Where a community service order made under section 39A (1) (a) of this Act in respect of a child is in force and, on the application of the relevant officer, it appears to the supervising court that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the community service order was made, the court may deal with the child for the offence in respect of which the community service order was made in any manner in which the court by which the community service order was made could have dealt with the child at the time it found him guilty of that offence.

(3) Where a child satisfactorily performs work under a community service order made under section 39A (1) (b) of this Act for a number of hours less than that specified in the community service order—

- (a) the amount required to be paid in full satisfaction of the fine shall be reduced by a sum that bears the

same ratio to that amount as the number of whole hours of work so performed bears to the number of hours of work specified in the community service order; and

- (b) any term of detention that, before the community service order was made, was ordered to be served in default of payment of the fine shall be reduced by a period that bears the same ratio to that term as the number of whole hours of work so performed bears to the number of hours of work specified in the community service order.

(4) A supervising court has jurisdiction to exercise the powers conferred by this section notwithstanding any provision of any other Act.

39K. (1) Where an application is made to a court by the relevant officer under section 39H or section 39J (1) or (2) of this Act, the court shall issue a summons requiring the child concerned to appear before the court on the hearing of the application and, if the child does not appear in answer to the summons, may issue a warrant for the arrest of the child.

Notice of applications, etc.

(2) Where an application is made to a court by a child under section 39H or section 39J (1) of this Act, the court shall cause notice of the application and of the time and place fixed for the hearing to be served on the relevant officer.

39L. (1) Where, pursuant to section 39G, 39H or 39J of this Act, a court—

Notification of discharge, amendment of orders, etc.

- (a) discharges a community service order;

- (b) varies the number of hours for which a child is required to perform work under a community service order;
- or
- (c) extends the period of 3 months specified in section 39E (4) of this Act,

the court shall cause notice in writing of the discharge, variation or extension to be given to—

- (d) the child;
- (e) a parent, guardian, or other person standing *in loco parentis* to the child, if the whereabouts of such a person are known to, or can be ascertained by reasonable inquiry by, the clerk of the court;
- (f) the relevant officer; and
- (g) if that court is not the supervising court, the supervising court.

(2) A reference in subsection (1) of this section or in section 39A, 39D, 39E, 39F, 39G, or 39J of this Act to the number of hours of work specified in, or required to be performed under, a community service order shall, where that number has been varied pursuant to section 39G or 39J of this Act, be construed as a reference to that number as so varied.

Order and subsequent conduct to be taken into account in sentencing.

39M. Where a child in respect of whom a community service order has been made under section 39A (1) (a) of this Act is subsequently dealt with by a court for the offence in respect of which the community service order was made the court, in dealing with the child, shall take into account—

- (a) that the community service order was made; and

- (b) anything done under the community service order,

and may take into account, either as an aggravating or a mitigating factor, the behaviour of the child since the community service order was made.

39N. Where a child in respect of whom a community service order is in force is lawfully engaged in remunerative employment he shall, in respect of—

Compensation.

- (a) work performed by him under the community service order; and
- (b) travelling done by him in order to perform work under the community service order,

be deemed to be a worker employed by the Crown for the purposes of the Workers' Compensation and Assistance Act 1981 and where, for the purposes of calculating the compensation payable under that Act, reference must be made to weekly earnings, the weekly earnings shall be deemed to be equal to the weekly earnings of the child in his lawful employment at the relevant time.

39P. Without limiting the generality of section 149 of this Act regulations made for the purposes of the provisions of this Act relating to community service orders may—

Regulations under this Part.

- (a) prescribe offences for the purposes of the definition of "prescribed offence" in section 4 of this Act;
- (b) provide for the appointment of overseers to oversee children in the performance of work under community service orders;

- (c) regulate the conduct of overseers, and of children in respect of whom a community service order is made, and provide for the health and safety of overseers, and of such children;
- (d) prescribe for the purposes of paragraphs (a) and (b), respectively, of section 39D of this Act, minimum and maximum numbers of hours in lieu of those set out in those paragraphs;
- (e) prescribe the maximum number of hours of work that a child may be required to perform under a community service order on any one day;
- (f) provide for travelling and transport arrangements to be made for children performing work under community service orders;
- (g) prescribe the effect of injury and sickness in relation to community service orders;
- (h) prescribe periods to be taken into account in computing the number of hours of work performed by a child under a community service order. ” .

Section 40
amended.

17. Section 40 of the principal Act is amended in subsection (3)—

- (a) by deleting “or” after paragraph (b); and
- (b) by deleting “1974.” at the end of the subsection and substituting the following—

“ 1974; or

- (d) the operation of section 39C (1) of this Act. ” .

18. After section 123 of the principal Act the following section is inserted—

Section 124
inserted.

- “ 124. (1) Where a Children’s Court makes any finding, order, or other decision—
- Order to review certain decisions of Children’s Courts.
- (a) upon the hearing of an application to declare a child in need of care and protection under section 30 of this Act;
 - (b) upon the hearing of an application for an order under section 32 of this Act;
 - (c) upon the hearing of an application under section 47 of this Act for the release of a child; or
 - (d) upon the hearing of an application for cancellation of an order made under section 47A, 47B, 47C, or 47D of this Act in respect of a child by the Minister and for the release of the child,

an application may be made by—

- (e) the Department;
- (f) the parent or guardian of the child in relation to whom the application was made;
- (g) the child in relation to whom the application was made; or
- (h) the person by whom the application was made,

to a Judge of the Supreme Court, sitting in Court or in Chambers, for an order to review the finding, order, or decision, and the provisions of the Justices Act 1902 apply as if the finding, order, or decision were a decision within the meaning of section 197 of that Act and the applicant for the order to review were the appellant within the meaning of that section.

(2) Where the Children's Court makes a finding, order, or other decision and under subsection (1) of this section the Department or a police officer has applied or is entitled to apply for an order to review the finding, order, or other decision, the child concerned may, if he is not already in custody, be apprehended by any such police officer or by an officer of the Department authorized by the Minister, and may, until the time for making application for an order to review has expired or, where such an application has been made, until the application has been finally disposed of, be—

- (a) taken to his place of residence and there left, upon the recognisance of a near relative for his appearance;
- (b) placed with some respectable person and such arrangement or agreement may be made as may be necessary or proper for the care and maintenance of that child; or
- (c) taken to and placed in any Departmental Centre or Departmental facility of an appropriate kind, or such other suitable place as is approved by the Director,

but any of the persons referred to in paragraphs (f), (g), and (h) of subsection (1) of this section may, on not less than 48 hours' notice to the Department, apply to a Judge of the Supreme Court for an order relating to the placement of the child pending the hearing or during any adjournment of the hearing and the Judge may make such order as in the circumstances seems appropriate having regard primarily to the welfare of the child. " .

19. Section 126 of the principal Act is amended by inserting after subsection (1) the following subsection—

Section 126
amended.

“ (1a) A person shall not, without the express authority of the court, publish in any newspaper or other printed medium or broadcast or televise any report of the proceedings of a Children’s Court on the hearing of a charge against, or any application concerning, a child, but this subsection does not apply to a disclosure referred to in subsection (2) of this section and shall not be read as enabling the court to authorize a disclosure prohibited by subsection (1) of this section. ” .

20. The principal Act is amended by adding, at the end, the following Schedule—

Addition
of Sixth
Schedule.

“ SIXTH SCHEDULE. (s. 4)

OFFENCES REFERRED TO IN PARAGRAPH (a)
OF THE DEFINITION OF “PRESCRIBED OFFENCE”.

*Section of
Criminal Code
by which
offence
created*

General description of offence

278	Wilful murder
279	Murder
280	Manslaughter
283	Attempted murder
292	Disabling in order to commit an indictable offence
293	Stupefying in order to commit an indictable offence
294	Acts intended to cause grievous bodily harm or prevent arrest
296	Intentionally endangering safety of persons travelling by railway
296A	Intentionally endangering safety of persons travelling by aircraft
298	Causing explosion likely to endanger life

No. 57.]

Child Welfare.

[1982.

- 300 Maliciously administering poison with
intent to harm
 - 301 Wounding and similar acts
 - 326 Rape
 - 327 Attempt to commit rape
 - 390B (b) Unauthorized use of aircraft when threats
are used, when offender is armed, or in
company
 - 393 Robbery
 - 394 Attempted robbery
 - 396 Demanding property with menaces with
intent to steal " .
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