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at 23 April 1996

WESTERN AUSTRALIA

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# CHILDREN'S COURT OF WESTERN AUSTRALIA ACT 1988

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**WESTERN AUSTRALIA**

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**CHILDREN'S COURT OF  
WESTERN AUSTRALIA ACT 1988**

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

*Children's Court of Western Australia  
Act 1988*

s. 1

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Children's Court of Western Australia Act 1988*<sup>1</sup>.

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

**Commencement**

2. This Act shall come into operation on such day as is or such days as are respectively fixed by proclamation<sup>1</sup>.

**Interpretation**

3. In this Act, unless the contrary intention appears —

“**CEO (Justice)**” has the meaning given to that expression in section 4 (1) of the *Child Welfare Act 1947*;

“**child**” means —

- (a) any boy or girl under the age of 18 years;
- (b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years; and
- (c) any boy or girl dealt with under section 19 (2);

“**clerk**” in relation to the Court sitting at any place, means the person appointed under this Act to be the clerk of the Court at that place;

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

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

**"Full Court"** has the same meaning as is stipulated in section 57 of the *Supreme Court Act 1935*;

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

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

**"member"** means a person, other than a Judge or a magistrate, appointed under section 11 to be a member of the Court;

**"President"** means the Judge who is appointed under section 7 to be the President of the Court.

[Section 3 amended by No. 15 of 1991 s.5; No. 14 of 1992 s.4 (3); No. 31 of 1993 s.27.]

### **Application of certain Acts**

4. (1) Subject to this Act, the provisions of the *Justices Act 1902*, except section 39 apply with such modifications as circumstances require, to the Court as a court of criminal jurisdiction and to the Court, a Judge, magistrate, member and a clerk and other officers of the Court as those provisions apply to the Supreme Court, a Judge of that Court and to the corresponding officers of the Supreme Court.

(2) The Court is a court within the meaning of the term **"Court"** in the *Evidence Act 1906*.

[Section 4 amended by No. 15 of 1991 s.6.]

**PART 2 — CHILDREN'S COURT OF  
WESTERN AUSTRALIA**

***Division 1 — Establishment and Constitution***

**Establishment of Court**

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

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

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

**Constitution of Court**

6. (1) The Court shall be constituted by —

- (a) a Judge;
- (b) a magistrate; or
- (c) not less than 2 members.

(2) Notwithstanding subsection (1) —

- (a) the Court may be constituted by a Judge or a magistrate sitting with one or more members;
- (b) the Court may be constituted by a member for the purposes of and incidental to the adjournment of proceedings in circumstances where practical considerations do not permit the Court to be constituted in accordance with subsection (1).



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

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

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

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

***Division 2 — Appointment of Judges, magistrates  
and members***

**Appointment, terms, conditions, etc. of Judges**

7. (1) A Judge, or more than one Judge, shall be appointed by the Governor by warrant under his hand on the recommendation of the Attorney General made after consultation with the Minister responsible for the administration of the *Community Services Act 1972*.

(2) A person is not eligible for appointment as a Judge unless he is a practitioner as defined by the *Legal Practitioners Act 1893* of not less than 8 years' practice and standing.

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

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

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

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

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

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

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

*[Section 7 amended by No. 31 of 1993 s.28.]*

### **Tenure of office**

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

### **Absence etc., of President**

8A. (1) Where —

- (a) the President is absent from duty for any reason;
- (b) the President declines to deal with any matter; or
- (c) no Judge has been designated to be the President,

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

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

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

### **Acting Judge**

9. (1) Where —

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

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- (b) a Judge declines to deal with any matter;
- (c) an office of Judge is vacant; or
- (d) for any reason the conduct of the business of the Court, in the opinion of the Governor, requires such an appointment to be made,

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

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

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

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

(5) An Acting Judge may be designated by the Governor as President of the Court.

**Appointment of magistrates**

**10.** (1) The Governor may from time to time by warrant under his hand appoint fit and proper persons to be magistrates of the Court.

(2) A person is not eligible to be appointed a magistrate of the Court unless eligible to be appointed a stipendiary magistrate.

(3) A stipendiary magistrate may be appointed to be contemporaneously a magistrate of the Court.

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

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

- (a) it shall be for such period as is specified in the instrument of appointment;
- (b) the provisions of sections 5, 5A, 5B, 5C (5), 7 (1), (3) and (6), and 8 (1) of the *Stipendiary Magistrates Act 1957* apply with such modifications as circumstances require to a person so appointed in the same way as those provisions apply to a stipendiary magistrate.

[Section 10 amended by No. 15 of 1991 s.8.]

### **Appointment of members**

11. (1) The Governor may appoint such persons as members of the Court as the Governor considers necessary.

(2) Members of the Court may be appointed either by a General Commission under the Public Seal of the State or by a special appointment notified in the *Gazette* and in the latter case members so appointed shall be deemed to be included in the General Commission then subsisting from the time of their appointment.

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(3) A member may be removed from office either by the issue of a new General Commission omitting the member's name or by an order of the Governor notified in the *Gazette* without the need for any formal writ.

(4) A member may resign his or her office by writing signed and delivered to the Governor.

**Oath or affirmation of office**

12. (1) A Judge or magistrate shall, before proceeding to discharge the duties of his or her office, take before a Judge of the Supreme Court or any person authorized for the purpose by the Governor the oath or affirmation of allegiance and an oath or affirmation in accordance with the form set out in Schedule 1.

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

- (a) a judge of another court of the State who has taken an oath or affirmation of allegiance and a judicial oath or affirmation; or
- (b) a magistrate who has taken the oaths or affirmations under section 8 (4) of the *Stipendiary Magistrates Act 1957*.

(2) A member of the Court shall, before proceeding to discharge the duties of his or her office, take before a stipendiary magistrate an oath or affirmation in accordance with the form set out in Schedule 1.

[Section 12 amended by No. 15 of 1991 s.9.]

***Division 3 — Sittings of the Court***

**Sittings as President directs**

13. (1) The Court shall sit at Perth and at such other places in Western Australia on such days and at such times as the President from time to time appoints.

(2) Notwithstanding subsection (1) but subject to the direction of the President, the Court may sit and act at any time and any place for the performance or discharge of any power or duty conferred or imposed on the Court.

(3) The President may direct a Judge, magistrate or member to sit at any place appointed under subsection (1) and may direct concurrent sittings of the Court at the same place for the prompt disposal of the Court's functions.

**Power to sit in chambers**

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

**Police officers to attend Court**

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

***Division 4 — Officers of the Court***

**Appointment of clerks, etc.**

**16.** (1) Subject to subsection (2), there shall be appointed by the Minister for each place appointed for sittings of the Court a clerk and such assistant clerks and other officers as may be required for the conduct of the functions of the Court.

(2) A person appointed to be a clerk of petty sessions under section 25A of the *Justices Act 1902* for a magisterial district shall be deemed for the purposes of this Act to have been appointed a clerk of the Court at any place within that district appointed for sittings of the Court.

(3) A person appointed to be a clerk or assistant clerk of the Court shall be deemed for the purposes of the *Justices Act 1902* to have been appointed a clerk of petty sessions under section 25A of that Act.

**Duties of clerks**

**17.** (1) The clerk of the Court at each place at which the Court is held shall —

- (a) issue summonses issued out of the Court at that place;
- (b) maintain a record of all proceedings, verdicts and judgments of the Court at that place;
- (c) make lists of all matters for hearing, trial, further hearing or rehearing by the Court at that place;
- (d) discharge all other duties and powers imposed or conferred under this Act and keep an account of all proceedings of the Court at that place;



- (e) take charge of and keep an account of all court fees and fines payable or paid into the Court at that place and of all moneys paid into and out of the Court at that place;
- (f) account for all such fees and fines and shall, when required, submit his accounts to be audited by the Auditor General appointed under the *Financial Administration and Audit Act 1985*; and
- (g) give effect to all lawful instructions of the President and do and perform all other acts and duties properly incidental to the office of clerk.

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

**Power of clerks to administer oaths, etc.**

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

(2) Any affidavit to be used in the Court may be sworn before a clerk, a Judge, a Commissioner for taking affidavits in the Supreme Court, a magistrate, a member or a justice of the peace.

**PART 3 — JURISDICTION OF THE COURT**

**Criminal jurisdiction as regards children**

**19.** (1) Subject to Division 2 of Part 5 of the *Young Offenders Act 1994*<sup>1</sup>, to section 17 of the *Offenders Community Corrections Act 1963*, and to this Part, the Court has exclusive jurisdiction to hear and determine a complaint of an offence alleged to have been committed by a child.

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

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

(3) Where it is provided by any other written law that a minimum penalty shall be imposed in relation to an offence, the Court is, notwithstanding that provision, not obliged to impose such a penalty.

(4) Where it is provided by any other written law that a person instead of appearing before justices on a complaint of a simple offence may elect to suffer a prescribed monetary penalty in respect of that offence, then, notwithstanding anything in this Act, a child may so elect.

*[(5), (6), (7) and (8) repealed]*

(9) Where a child is before the Supreme Court or the District Court, that court has all the powers of the Children's Court of Western Australia in all respects as if the child had been before that Court and the Supreme Court or District Court, in passing sentence upon a child who is before such a court in respect of an

indictable offence, may impose any penalty or disqualification or make any order or direction that —

- (a) may be imposed or made with respect to a person over the age of 18 years who has been convicted on indictment of that indictable offence; or
- (b) may be imposed or made by the Children's Court of Western Australia under this Act or any other written law.

*[Section 19 amended by No. 15 of 1991 s.10; No. 104 of 1994 s.224.]*

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

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

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

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

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

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

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

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

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

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

- (a) the Court may, on its own motion or on the application of the child, direct the prosecutor —
  - (i) to serve or cause to be served on the child (or the child's solicitor or counsel), and lodged with the clerk, within such time as is specified, notice of the material evidence; and
  - (ii) to afford the child (or the child's solicitor or counsel) reasonable opportunity to inspect any material exhibits,

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

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

- (c) the Court shall, subject to the provisions referred to in section 19 (1), hear and determine the charge as if the complaint were an indictment, and the hearing were a trial on indictment and *The Criminal Code* shall apply with such modifications as circumstances require; but the child is not thereby entitled to have any issue tried by a jury; and
- (d) subject to Part 5, the child, if convicted, shall, for the purposes of punishment and orders, procedures, and proceedings consequential on conviction, be taken to have been convicted on indictment.

[Section 19B inserted by No. 15 of 1991 s.11.]

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

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

- (a) the Court is satisfied that a person over the age of 18 years (“**the adult**”) is charged with the same indictable offence as a child or with an indictable offence arising from the same acts, omissions, or circumstances as are alleged against a child charged with an indictable offence; and
- (b) the Court is for any reason of the opinion that it is appropriate that the child be dealt with on indictment jointly with the adult,

the Court —

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

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of petty sessions which comes to deal with the complaint —

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

or

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

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

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

(3) Where a child is committed for trial on indictment under subsection (1) (d) and it becomes inexpedient or undesirable to

conduct the trial of the adult jointly with that of the child, the court to which the child has been committed for trial may —

- (a) nevertheless try the child; or
- (b) on the application of the child, order the transfer of the complaint on which the child was committed to the Court to be heard and determined in accordance with section 19B (3) or (4).

(4) For the purposes of subsection (1), the Court may adjourn the hearing of the charge of the indictable offence until proceedings against the adult are at a stage where the Court can be satisfied about any of the matters in that subsection.

*[Section 19C inserted by No. 15 of 1991 s.11.]*

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

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

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

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

*[Section 19D inserted by No. 15 of 1991 s.11.]*

**Procedure for charges of Commonwealth indictable offences**

**19E.** Where a child is charged with an indictable offence against a law of the Commonwealth and the Court makes a direction under section 19B (4) (a), the Crown in the right of the Commonwealth acting by the Attorney General, the Director of Public Prosecutions, or some other appropriate official, may assume the conduct of the prosecution and shall then be taken to be the complainant.

*[Section 19E inserted by No. 15 of 1991 s.11.]*

**Rules**

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

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

**Non-criminal jurisdiction as regards children**

**20.** Subject to this Act, the Court has exclusive jurisdiction to hear and determine all complaints and applications made with respect to a child —

- (a) under the *Child Welfare Act 1947* (but not including complaints of offences under that Act committed by adult persons); and



- (b) under sections 17, 17A, 17B, 18 and 20 of the *Education Act 1928*.

**Limitations on exercise of certain jurisdiction**

21. (1) The Court shall not impose a sentence of imprisonment on a child under the age of 16 years.

(2) When constituted by or so as to include a magistrate, the Court may not sentence a child —

- (a) to be detained in a detention centre for a period longer than 6 months; or
- (b) to imprisonment for a period longer than 3 months.

(3) Where the Court constituted by or so as to include a magistrate imposes sentences of detention in a detention centre or imprisonment it shall not, if it orders one or more of those sentences to be served cumulatively with any other of the sentences imposed by it on that occasion order that the child be detained in a detention centre for a period longer than 6 months or imprisoned for a period longer than 3 months.

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

- (a) sentence a child to be detained in a detention centre or to be imprisoned; or
- (b) make an order declaring a child to be in need of care and protection.

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

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

### **President may extend powers of magistrate**

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

(2) A magistrate who is directed to hear and determine a particular complaint of an offence under this section shall, notwithstanding section 21 (2), in respect of that complaint have extended powers of sentencing as if that magistrate were a Judge.

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

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

### **Court may require attendance of parent or guardian**

23. (1a) This section applies to proceedings other than those to which section 45 of the *Young Offenders Act 1994*<sup>1</sup> applies.

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

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

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

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

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

Penalty: \$500.

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

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

- (a) of any charge laid against the child alleging the commission of an offence;
- (b) of any finding, order or decision made by the court in the determination of the proceedings;
- (c) of any other information that the court considers appropriate.

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

**[24 — 26. Repealed by No. 104 of 1994 s.226.]**

**Certain orders may be set aside**

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

(2) Where a complaint or application is being made against or concerning a child, the Court may cause a copy or notice of the complaint or application to be served upon a parent of or a person standing *in loco parentis* to the child if that is practicable prior to the hearing of the complaint or application.

**Court may re-hear proceedings**

28. (1) Subject to this section, the Court may order that any original proceedings in which an order (not being an order made following conviction on indictment) was made against a child under the *Young Offenders Act 1994*<sup>1</sup> or the *Child Welfare Act 1947* are to be reheard.

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

- (a) the Director-General of the Department for Community Services or the CEO (Justice);
- (b) a parent or guardian of the child against whom an order may be made in those proceedings;
- (c) a child to whom the proceedings relate; or
- (d) the complainant in those proceedings.

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

- (a) is not required to be constituted in the same manner as the Court before which the original proceedings were heard;
- (b) shall not be constituted by members sitting alone;
- (c) has power to set aside or vary any finding or order made in the original proceedings; and
- (d) has power to make any finding or order which could have been made in the original proceedings.

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

(5) Where any proceedings are re-heard under this section the proceedings as so re-heard shall not be taken to have been original proceedings for the purposes of any further application under this section, but nothing in this section derogates from any right that may be available to any person by way of appeal.

*[Section 28 amended by No. 31 of 1993 s.29; No. 104 of 1994 s.227.]*

### **Witnesses and contempt**

**29.** (1) The Court may, by summons issued by a Judge, magistrate, member or clerk, summon witnesses for examination on oath, in the manner provided for proceedings before justices for simple offences.

(2) A person who, being required by summons to attend as a witness fails, without reasonable excuse, to appear at the time and place specified in the summons or who, being in attendance

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whether voluntarily or pursuant to a summons, refuses to be sworn or to make an affirmation or refuses to answer any lawful question is guilty of contempt of court.

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

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

- (a) until the fine is paid; or
- (b) for a term not exceeding 12 months,

whichever may be the shorter period.

**Transfer of complaint to court of petty sessions**

**30.** (1) Where a complaint of an offence is made to the Court and the Court is of the opinion that it does not have jurisdiction to hear and determine the complaint, the Court may order the transfer of the matter to a court of petty sessions.

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

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

- (b) the decision has full force and effect and anything done pursuant to the decision is lawful; but
- (c) the Court or, if the decision is the subject of an application for leave to appeal or of an appeal, the Supreme Court, on the application of the Attorney General, shall —
  - (i) set aside the decision;
  - (ii) remit any penalty that may have been imposed; and
  - (iii) order the transfer of the complaint to a court of petty sessions to be dealt with according to law.

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

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

*[Section 30 amended by No. 15 of 1991 s.13.]*

## PART 4 — PROCEDURE OF THE COURT

### Exclusion of persons from hearing

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

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

### Representation in the Court

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

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

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



- (iii) when the complaint is made or sworn, or the application is made, by or on behalf of a public authority, by an officer of the public authority acting in the course of the officer's duties;

and

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

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

(4) In this section —

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

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

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

[Section 32 inserted by No. 15 of 1991 s.14.]

**Director-General may take part in proceedings**

**33.** The Director-General of the Department for Community Services or an officer of that Department, or the CEO (Justice) or a person who is an officer of the department of the Public Service for which the CEO (Justice) is responsible and is authorized by the CEO (Justice), may be present at the hearing in the Court of any complaint against or application or other proceeding concerning a child and, if present, is entitled to examine and cross-examine witnesses and to be heard concerning the remand, punishment or disposal of the child.

*[Section 33 amended by No. 31 of 1993 s.30.]*

**Court must explain proceedings**

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

*[(2) repealed]*

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

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

**Restrictions on reports of proceedings**

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

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

- (b) as a person in respect of whom the proceedings are taken;
- (c) as a witness; or
- (d) as a person against or in respect of whom an offence has or is alleged to have been committed.

(2) In the case of criminal proceedings in the Supreme Court or the District Court, including any appellate proceedings to which subsection (1) does not apply, the court may, after considering the public interest and the interests of the child or children concerned, order that no person shall publish or cause to be published in any newspaper or other publication or broadcast or cause to be broadcast by radio or television a report of those proceedings containing any particulars or other matter likely to lead to the identification of a child who is concerned in those proceedings —

- (a) as a person against whom those proceedings are taken;
- (b) as a witness; or
- (c) as a person against or in respect of whom an offence has or is alleged to have been committed.

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

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

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

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

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

*[Section 35 amended by No. 15 of 1991 ss.15 and  
17 (2); No. 14 of 1992 s.6 (8).]*

**Disclosure of convictions, orders etc. restricted**

**36.** (1) Where —

(a) a complaint against a child is dismissed by the Court;

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

(c) a child is ordered to be committed to the care of the Department for Community Services or placed under the control of that Department,

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

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

- (a) by the Supreme Court as for a contempt; or
- (b) after summary conviction by a fine of \$10 000 or imprisonment for 12 months.

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

*[Section 36 amended by No. 15 of 1991 ss.16 and 17 (3).]*

**Supreme Court may allow publication etc.**

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

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

- (a) The age, safety or well-being of the child.
- (b) The safety or well-being of a person other than the child.
- (c) The safety of the public or the protection of property.
- (d) The public interest in the apprehension of escapees for the purpose of returning them to lawful custody.
- (e) The public interest in the prevention or detection of a crime.

(3) Only the Attorney General or the Commissioner of Police may make an application for an order under subsection (1) and,

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unless the Court otherwise orders, the application shall be *ex parte*.

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

- (a) the content of any matter to be published, broadcast or disclosed;
- (b) when, where and by what means the publication, broadcast or disclosure may be made;
- (c) the duration of the order.

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

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

### **Practice and procedure**

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

(2) Subject to this Act, the practice and procedure of the Court shall be governed by the Rules of Court, and until provision is made by Rules of Court or where no special provision is contained in the Rules of Court, the rules of practice under the *Justices Act 1902*, for the time being in force, so far as are applicable shall apply to the Court.

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

### **Rules of Court**

**38.** The Judge, or if there is more than one Judge a majority of the Judges, may make rules for regulating and prescribing the practice and procedure to be followed in the Court and for regulating and prescribing all matters or things incidental or relating to such practice and procedure or necessary or convenient to be prescribed for the conduct of any business of the Court.

### **Mode of enforcing orders by the Court**

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

**PART 5 — REVIEW AND APPEAL**

**Review by President of certain sentences**

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

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

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

- (a) by the child, within one month after the date of the order;
- (b) by the CEO (Justice), on behalf of the child, at any time after the date of the order;
- (c) by the prosecutor, within one month after the date of the order.

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



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

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

- (a) no application under this section may subsequently be made; and
- (b) any application made under this section and not finally determined when leave to appeal is granted under section 41 shall be deemed to be withdrawn.

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

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

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

*[Section 40 amended by No. 33 of 1989 s.18; No. 31 of 1993 s.31.]*

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

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

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applies with such modifications as circumstances require to the appeal.

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

- (a) a decision as to the jurisdiction of the Court;
- (b) a decision allowing a demurrer to a complaint or arresting judgment on a complaint or quashing a complaint;
- (c) a conviction or a finding whether made following a plea of guilty or an admission of the truth of any matter or following trial;
- (d) an acquittal;
- (e) a dismissal of a complaint;
- (f) a decision to make an order under Part 7 of the *Young Offenders Act 1994*<sup>1</sup> dealing with a person for an offence (whether or not the person may thereafter be further dealt with for the offence);
- [(g) *deleted*]
- (h) a penalty imposed or order made consequent on any such decision, conviction, finding, acquittal, or dismissal,

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

[Section 41 inserted by No. 15 of 1991 s.18; amended by No. 104 of 1994 s.229.]

### **Appeal against certain other orders**

42. (1) Subject to this Act, where the Court, when constituted so as not to consist of or include a Judge, makes any finding, order, or other decision —

- (a) upon the hearing of an application to declare a child in need of care and protection under section 30 of the *Child Welfare Act 1947*;
- (b) upon the hearing of an application under section 47 of the *Child Welfare Act 1947* for the release of a child; or
- (c) upon the hearing of an application for cancellation of an order made under section 47A, 47B, 47C or 47D of the *Child Welfare Act 1947* in respect of a child by the Minister responsible for the administration of that section and for the release of the child,

an application for leave to appeal may be made under Part VIII of the *Justices Act 1902* by —

- (aa) the Director-General of the Department for Community Services;
- (bb) the parent or guardian of the child in relation to whom the application was made;
- (cc) the child in relation to whom the application was made; or
- (dd) the person by whom the application was made,

and that Part (other than paragraphs (a) and (b) of section 185 (2)) shall apply, with all necessary changes and subject to section 42A, as if the finding, order or decision were a decision of justices within the meaning of that Part.

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(2) Where a person has applied or is entitled to apply under subsection (1) for leave to appeal, the person may, on not less than 48 hours' notice to the Department for Community Services (if the Director-General is not the applicant), apply to a Judge for an order relating to the placement of the child pending the final disposition of the proceedings and the Judge may make such order as in the circumstances seems appropriate having regard primarily to the welfare of the child.

*[Section 42 inserted by No. 33 of 1989 s.18<sup>2</sup>; amended  
by No. 31 of 1993 s.32.]*

**Further provisions as to appeals**

**42A.** For the purposes of sections 41 and 42, Part VIII of the *Justices Act 1902* shall be read as if —

- (a) references to the clerk of petty sessions were references to the clerk of the Court; and
- (b) references to “**justices**” or “**the justices**” or “**any justices**” were references to the court.

*[Section 42A inserted by No. 33 of 1989 s.18<sup>2</sup>.]*

**Appeals to Full Court**

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

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

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

- (a) the conviction on a ground which involves a question of fact alone or a question of mixed law and fact;
- (b) a penalty imposed or an order made consequent on the conviction; or
- (c) an order of the Court under section 178 of the *Young Offenders Act 1994*<sup>1</sup>,

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

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

(3b) In subsection (1) “**decision**” has the same definition as in section 41 (2) and includes an order of the court under section 178 of the *Young Offenders Act 1994*<sup>1</sup>.

(4) Subject to this Act, where the Court, when constituted by or so as to include a Judge, makes any finding, order or other decision —

- (a) upon the hearing of an application to declare a child in need of care and protection under section 30 of the *Child Welfare Act 1947*;
- (b) upon the hearing of an application under section 47 of the *Child Welfare Act 1947* for the release of a child; or

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- (c) upon the hearing of an application for cancellation of an order made under section 47A, 47B, 47C or 47D of the *Child Welfare Act 1947* in respect of a child by the Minister responsible for the administration of that section and for the release of the child,

an appeal may be made to the Full Court against the finding, order or other decision by —

- (aa) the Director-General of the Department for Community Services;
- (bb) the parent or guardian of the child in relation to whom the application was made;
- (cc) the child in relation to whom the application was made; or
- (dd) the person by whom the application was made.

[*Section 43 amended by No. 15 of 1991 s.19; No. 31 of 1993 s.32; No. 104 of 1994 s.230.*]

**PART 6 — MAINTENANCE AND DESTRUCTION OF  
COURT RECORDS**

**Interpretation**

44. In this Part —

**“charge sheet”** means book or document containing, in relation to a complaint, an official record of —

- (a) the name of the defendant;
- (b) the particulars of the offence with which the defendant was charged; and
- (c) the determination of the complaint,

whether or not that book or document also contains any other matter relating to the complaint;

**“court record”** means official record of any proceedings in the Court and includes any document filed in the Court, or in the custody of the Court, in relation to the proceedings;

**“document”**, **“negative”** and **“reproduction”** have the same respective meanings as they have in and for the purposes of sections 73A to 73V of the *Evidence Act 1906*;

**“official record”** includes —

- (a) any document, book, plan, paper, photograph, or parchment; or
- (b) any other material or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them,

made or received by the Court or a person acting judicially under this Act.

### **Application of Part 6**

45. This Part shall not be construed so as to derogate in any way from section 5 (3) or from the *Library Board of Western Australia Act 1951*.

### **Negative of court record**

46. A negative of a court record may be made at any time to be held by or on behalf of the Court.

### **Destruction of court records generally**

47. Subject to sections 45, 48 and 49, a court record —

- (a) which is a charge sheet may be destroyed after the expiration of 53 years; or
- (b) which is not a charge sheet may be destroyed after the expiration of 25 years,

from the time when it became such a court record.

### **Destruction of court records when negatives held**

48. Subject to sections 45 and 49 a court record may, if a negative of it is held by or on behalf of the Court, be destroyed at any time after the expiration of 3 years from the time when it became a court record, but in that case the negatives shall be so held until —

- (a) in the case of the negative of a charge sheet, the expiration of 53 years; or
- (b) in the case of a negative of a court record that is not a charge sheet, the expiration of 25 years,

from the time when the court record became a court record.



**Preservation orders**

49. (1) A Judge or magistrate may, of his own motion or on the application of any person interested in any proceeding in the Court, which proceeding has not yet been completed —

- (a) order in writing that all or any of the court records relating to that proceeding be preserved from destruction for a period of one year; and
- (b) from time to time renew in writing for a period of one year an order made under this subsection.

(2) A person shall not destroy a court record to which an order made or renewed under subsection (1) relates while that order is in force.

Penalty: \$100.

**Evidentiary provision**

50. For the purposes of the laws relating to the admissibility of evidence but without otherwise affecting those laws, where, at any time, a negative of a court record is held by or on behalf of the Court, the negative is deemed to be the court record and shall be treated as such by any other Court, without any inquiry as to whether or not the court record has been destroyed.

## PART 7 — MISCELLANEOUS

### Forms of proceedings

51. Every complaint, summons, conviction, order or warrant under this Act shall be valid and sufficient —

- (a) if it is in any applicable prescribed form, with such modifications as circumstances may require; or
- (b) if the offence, act or default is stated in the complaint, summons, conviction, order or warrant in the words of the relevant written law,

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

### Regulations

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

### Savings and transitional

53. (1) This Act shall apply in relation to any offence or any circumstances which could give rise to proceedings in relation to a child whether that offence or those circumstances occurred before or after the commencement of Part 3.

(2) Any proceedings commenced before a children's court established under the *Child Welfare Act 1947* and not finally disposed of at the commencement of Part 3 may be continued and disposed of by the Court established under this Act in all respects as if the proceedings had been commenced before that Court.

(3) Every order made by a children's court established under the *Child Welfare Act 1947* and still in force upon the commencement of Part 3 shall continue in force and shall be

deemed to be an order made by the Court established under this Act and may be discharged or amended by that Court accordingly.

(4) Every order made under section 34 (1) (a) of the *Child Welfare Act 1947* made by a children's court established under that Act and still in force upon the commencement of Part 3 shall continue in force in accordance with its terms and that provision notwithstanding the repeal and substitution of that provision by the *Acts Amendment (Children's Court) Act 1988* and the *Child Welfare Act 1947* shall continue to apply in relation to such an order as if that Act had not been amended by the *Acts Amendment (Children's Court) Act 1988*.

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

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

(6) Upon the commencement of Part 3, the clerks of children's courts established under section 19 of the *Child Welfare Act 1947* shall transfer the records of those courts to the Court in accordance with the directions of the President.

[Section 53 amended by No. 15 of 1991 s.20.]

**SCHEDULE 1**

[Section 12]

**OATH OR AFFIRMATION TO BE TAKEN BY A JUDGE,  
MAGISTRATE OR MEMBER**

OATH

I, \_\_\_\_\_ do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second, Her Heirs and Successors, according to law in the office of Judge (or magistrate or member, as appropriate) of the Children's Court of Western Australia and I will do right to all manner of people after the laws and usages of this State, without fear or favour, affection or illwill.

So help me God!

AFFIRMATION

I \_\_\_\_\_ do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second, Her Heirs and Successors, according to law in the office of Judge (or magistrate or member, as appropriate) of the Children's Court of Western Australia and I will do right to all manner of people after the laws and usages of this State, without fear or favour, affection or illwill.

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**NOTES**

<sup>1.</sup> This reprint is a compilation as at 23 April 1996 of the *Children's Court of Western Australia Act 1988* and includes the amendments effected by the other Acts referred to in the following Table<sup>1a</sup>.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Children's Court of Western Australia Act (No. 2) 1988</i>	69 of 1988	15 December 1988	1 December 1989 (see <i>Gazette</i> 24 December 1989 p.4327)	Short title subsequently amended (see note under section 1)
<i>Justices Amendment Act 1989, section 18</i>	33 of 1989	22 December 1989	1 June 1991 (see <i>Gazette</i> 17 May 1991 p.2455)	
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991</i>	15 of 1991	21 June 1991	Sections 8 and 20 deemed operative 1 December 1989 (see section 2 (1)); balance: 9 August 1991 (see <i>Gazette</i> 9 August 1991 p.4101)	
<i>Acts Amendment (Sexual Offences) Act 1992, sections 4 (3) and 6 (8)</i>	14 of 1992	17 June 1992	1 August 1992 (see <i>Gazette</i> 28 July 1992 p.3671)	
<i>Acts Amendment (Ministry of Justice) Act 1993, Part 5</i>	31 of 1993	15 December 1993	Deemed operative 1 July 1993	Part 19: transitional <sup>3</sup>
<i>Young Offenders Act 1994, Part 11, Division 2</i>	104 of 1994	11 January 1995	13 March 1995 (see <i>Gazette</i> 10 March 1995 p.895)	

<sup>1a</sup> As at the date of this reprint Part 9 of the *Sentencing (Consequential Provisions) Act 1995* (Act No. 78 of 1995) was not in operation.

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Part 9 of the *Sentencing (Consequential Provisions) Act 1995* (Act No. 78 of 1995) reads as follows —

“ **PART 9 — CHILDREN'S COURT OF  
WESTERN AUSTRALIA ACT 1988**

**Consequential amendments**

12. The *Children's Court of Western Australia Act 1988* is amended as set out in the Table to this section.

TABLE

s. 19 (1) Delete “, to section 17 of the *Offenders Community Corrections Act 1963*,” and substitute the following —

“ , to sections 78, 128 and 132 of the *Sentencing Act 1995*, ”.

s. 19 (3) Repeal the subsection.

s. 19 (9) Repeal the subsection and substitute the following subsection —

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

s. 21 (1) Repeal the subsection. ”.

<sup>2</sup> Clause 2 (3) of the Schedule to the *Justices Amendment Act 1989* (Act No. 33 of 1989) reads as follows —

“ (3) (a) In this subclause —

“**commencement day**” means the day on which subclause (2) comes into operation;

“**former sections**” means sections 41 and 42 repealed by subclause (2) and the relevant rules of court;

“**new sections**” means sections 41, 42 and 42A inserted by subclause (2) and the relevant rules of court.

(b) On and after the commencement day the new sections apply for the purposes of any appeal against a decision of the Court (within the meaning in those sections), including a decision in respect of which time for an appeal

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under the former sections had commenced to run under those sections, but had not expired, before the commencement day.

- (c) (i) An appeal under former section 41 or 42 commenced by a person before the commencement day continues to be subject to that section, and any further appeal that would have been available to that person shall continue to be available to him, as if that section had not been repealed.
- (ii) For the purposes of this paragraph an appeal is commenced when an application is filed in the Supreme Court under section 197 of the *Justices Act 1902* repealed by section 16 of this Act.

<sup>3</sup> Part 19 of the *Acts Amendment (Ministry of Justice) Act 1993* (Act No. 31 of 1993) reads as follows —

“ **PART 19 — SAVINGS AND TRANSITIONAL**

**Savings**

1. If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

**Transitional**

2. Unless the contrary intention appears, a reference, however expressed, in any law or document to the former Department of Corrective Services or Crown Law Department, the chief executive officer of either of those departments, or an office or organizational unit within either of those departments, is to be read as a reference to the Ministry of Justice, the chief executive officer of the Ministry of Justice, or the corresponding office or unit within the Ministry of Justice, as is appropriate.

