

CHILD WELFARE AMENDMENT ACT (No. 2)

No. 83 of 1990

AN ACT to amend the *Child Welfare Act 1947* and to make consequential amendments to the *Bail Act 1982*.

[Assented to 22 December 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Child Welfare Amendment Act (No. 2) 1990*.

Commencement

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

Principal Act

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

[*Reprinted as at 23 May 1990.]

Section 4 amended

4. Section 4 of the principal Act is amended in subsection (1) by deleting the definition of “prescribed offence”.

Section 33 repealed and a section substituted

5. Section 33 of the principal Act is repealed and the following section is substituted—

Police powers in respect of offending children

“ 33. (1) Where a child is reasonably believed to have committed or be about to commit an offence, a member of the Police Force may—

- (a) if the offence is not one referred to in paragraph (a) or
- (b) of section 72 (1), having regard to the circumstances—

- (i) orally, or in writing caution the child; or

- (ii) charge the child and issue a notice to attend court in accordance with section 33B;

- (b) if the child is eligible to be dealt with by a children’s panel and the matter can be dealt with by a children’s panel, charge the child and cause the complaint to be forwarded to the Children’s (Suspended Proceedings) Panel or a children’s panel in accordance with section 73 (2);

- (c) charge the child and cause a summons to be issued under the *Justices Act 1902*; or

(d) apprehend, charge and—

- (i) subject to the *Bail Act 1982* and subsection (3), detain the child in custody pending the child's appearance in court; or
- (ii) release the child pending the child's appearance before a children's panel.

(2) The Commissioner of Police shall make rules, orders, or regulations under section 9 of the *Police Act 1892* in respect of the apprehension of children and the detention of children in custody and a member of the Police Force shall have regard to any such rules, orders, or regulations.

(3) A child in custody who is refused bail under the *Bail Act 1982*, or who is not released on bail, shall, subject to subsection (4) and section 28 (2), be taken to and placed in a detention centre as soon as practicable after the child's apprehension.

(4) A child may be held in the custody of the police until arrangements can be made for the child to be taken to and placed in a detention centre in accordance with subsection (3). ”.

Section 33A amended

6. Section 33A of the principal Act is amended by deleting “should” and substituting the following—

“ shall ”.

Section 33B inserted

7. After section 33A of the principal Act, the following section is inserted—

Notices to attend court

“ **33B.** (1) A notice to attend court issued under section 33 (1) (a) (ii) shall—

- (a) be in a form approved by the Director-General;

- (b) be signed by the member of the Police Force issuing it;
- (c) name the child to whom it is directed;
- (d) describe shortly the offence alleged to have been committed by the child;
- (e) in relation to the alleged offence, set out such particulars as to—
 - (i) the alleged time and place of its commission;
 - (ii) any person alleged to be aggrieved; and
 - (iii) any property alleged to be involved,as are necessary to inform the child of the nature of the allegation;
- (f) tell the child to appear at a specified time and at a specified place before the court;
- (g) state that failure to so appear may result in the arrest of the child;
- (h) be served personally on the child;
- (i) contain a certificate by the member of the Police Force who serves it on the child as to the time and place of service; and
- (j) contain a certificate by a member of the Police Force as to the matters in subsection (5).

(2) A notice to attend court may be issued in respect of more than one alleged offence.

(3) A member of the Police Force who serves a child with a notice to attend court shall explain orally to the child in simple language the effect of the notice and in particular the consequences of failing to appear as required by the notice.

(4) Failure to comply with subsection (3) does not invalidate the service of the notice to attend court.

(5) A copy of a notice to attend court issued to a child shall be served personally on or sent by post to the address of the parent, foster parent, or guardian of the child unless, after reasonable enquiry, the whereabouts or address of such a person cannot be ascertained.

(6) A certificate by a member of the Police Force in accordance with subsection (1) (i) or (j) is sufficient proof, in the absence of evidence to the contrary, of the matters in the certificate.

(7) Where a child who has been served with a notice to attend court fails to appear before the court in accordance with the notice and the court is satisfied that the notice was served personally on the child, the court may issue a warrant to apprehend the child. ”.

Section 34 amended

8. Section 34 of the principal Act is amended in subsection (3) (b) by deleting “(3) or”.

Section 34B amended

9. Section 34B of the principal Act is amended in subsection (2) (b) by deleting “(3) or”.

Section 39P amended

10. Section 39P of the principal Act is amended by deleting paragraph (a).

Section 70 amended

11. Section 70 of the principal Act is amended—

(a) in subsection (2) by deleting paragraph (a) and substituting the following paragraph—

“ (a) unless the child has attained the age of 10 years; ”;
and

- (b) in subsection (3) by deleting the words “but who appears to that court not to have attained at the time of the commission of the alleged offence the age of 16 years”.

Section 141 amended

12. Section 141 of the principal Act is amended—

(a) in subsection (2) by—

- (i) inserting after “*The Criminal Code*” the following—

“ , whether on remand or otherwise, ”;

- (ii) deleting paragraph (a) and substituting the following paragraph—

“ (a) attending, or travelling to or from a court; ”;

and

- (iii) deleting paragraph (e) and substituting the following paragraph—

“ (e) absent from a detention centre pursuant to a written authorization of the Director-General made in accordance with subsection (3). ”;

and

- (b) by inserting after subsection (2) the following subsection—

“ (3) The Director-General may, in writing, authorize a child to be absent from a detention centre for a period not exceeding 72 hours, and the written authorization shall specify—

(a) the time of the authorized absence;

(b) the period of the authorized absence; and

(c) the purpose of the authorized absence. ”.

Fourth Schedule amended

13. The Fourth Schedule of the principal Act is amended—

- (a) in Division A of Part 1 by deleting paragraph (d) in the item relating to section 398 of *The Criminal Code* and substituting the following paragraph—

“ (d) any attempt to commit the crime of sexual assault or aggravated sexual assault or the misdemeanour of indecent assault or aggravated indecent assault; or ”;

and

- (b) in Part III by inserting the following items after the item relating to section 59 of the *Road Traffic Act 1974*—

“ 60 Reckless driving

63 Driving under the influence of alcohol, drugs, or alcohol and drugs

64 Driving with prescribed percentage of alcohol in the blood ”.

Sixth Schedule repealed

14. The Sixth Schedule to the principal Act is repealed.

Consequential amendment to the *Bail Act 1982*

15. Clause 2 of Part C of the Schedule to the *Bail Act 1982* is amended by deleting “section 33 (2)” and substituting the following—

“ section 33 (3) ”.