

WESTERN AUSTRALIA

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

(No. 69 of 1988)

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WESTERN AUSTRALIA

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

No. 69 of 1988

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

[Assented to 15 December 1988]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Children's Court of Western Australia Act (No. 2) 1988*.

Commencement

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

Interpretation

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

“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 under the apparent 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;

“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.

Application of certain Acts

4. (1) The provisions of the *Justices Act 1902*, except section 39 and Part VIII 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*.

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).

(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 *Child Welfare Act 1947*.

(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.

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.

Acting Judge

9. (1) Where—

- (a) a Judge is or is expected to be absent from duty for any reason;
- (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) Subject to any necessary modifications, the provisions of sections 5, 5A, 5B, 5C (2), (3), (4) and (5), 7 and 8 of the *Stipendiary Magistrates Act 1957* shall apply in relation to a magistrate of the Court in the same way as those provisions apply in relation to a stipendiary magistrate, except that section 8 (2) of that Act shall not apply in relation to a magistrate of the Court who is appointed other than on a full time basis.

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.

(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.

(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.

*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 Part V of the *Child Welfare Act 1947* (which provides for children's panels), to sections 17 and 20H of the *Offenders Probation and Parole 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—

- (a) a person before the Court on a complaint of an offence alleged to have been committed by that person when under the age of 18 years for the purposes of any proceedings in respect of that offence; and
- (b) a person in respect of whom a community service order made under the *Child Welfare Act 1947* remains in force pursuant to section 39F of that Act for the purposes of discharging the community service order or otherwise disposing of the matter in respect of which the community service order was made.

(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) In the case of a complaint of an indictable offence brought against a child—

- (a) the child may elect to be tried for that offence in the District Court or the Supreme Court, as may be appropriate, and if the child so elects, the Court shall exercise such powers and jurisdiction only as are conferred upon a court of petty sessions in respect of the examination and committal for trial of persons charged with indictable offences; and
- (b) the Court must inform the child of his or her right to make an election under this subsection.

(6) The Court may, instead of hearing and determining a complaint of an indictable offence alleged to have been committed by a person when under the age of 18 years who has attained the age of 18 years, exercise such powers and jurisdiction only as are conferred upon a court of petty sessions in respect of the examination and committal for trial of persons charged with indictable offences.

(7) Where a child is charged before the Court with an indictable offence and the Court is satisfied that a person over the age of 18 years is to be tried on indictment for the same offence or an offence arising from the same acts, omissions or circumstances, the Court may, upon the application of the child or the prosecution, exercise such powers and jurisdiction only as are conferred upon a court of petty sessions in respect of the examination and committal for trial of persons charged with indictable offences and order that the child be tried on indictment together with that other person.

(8) For the purposes of subsection (7), the Court may delay dealing with a child charged with an indictable offence to enable proceedings against a person over the age of 18 years to proceed to a stage where the Court may properly be satisfied in terms of that 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 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.

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. (1) In any proceedings in respect of or affecting a child, the court shall inquire in to 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.

Court may refrain from imposing punishment

24. (1) Notwithstanding the provisions of any written law, the Court in awarding punishment to or imposing a penalty upon any child may have regard to the antecedents, character, age, health or mental condition of the child, and may take into account the nature of the offence or any special circumstances of the case.

(2) Subject to subsection (3) the Court may refrain from imposing any punishment, penalty or fine, or without proceeding to conviction dismiss the complaint, but may in either case make an order as to the payment of any costs or charges incurred at or in relation to the proceedings.

(3) The Court may not exercise the power to refrain pursuant to subsection (1) with respect to more than 3 offences. For the purpose of this subsection, multiple offences arising from the one incident shall be treated as one offence.

Court may order compensation or restitution

25. (1) The Court may, subject to this section, on the application of the prosecutor made at the hearing, order a child against whom any charge for an offence before the Court has been proved to pay compensation, or make restitution, in respect of any damage or loss occasioned by the offence to any person who has suffered that damage or loss.

(2) An order under this section may direct the child to pay such sum as the Court thinks reasonable, either as one payment or by instalments, and in determining the amount of the order, the Court shall have regard to the means of the child and his ability to pay the amount ordered.

(3) Where the Court has made an order for the payment of any money under this section, the child shall pay that money to the clerk of the Court for transmission to the person in whose favour the order was made.

(4) A person to whom payment is to be made under this section may recover any amount in arrear by obtaining from the clerk of the Court a certificate given by the clerk as to the amount due under the order to the person and not paid, and upon the filing of the certificate in the office of a Clerk of a Local Court, the certificate shall be deemed to be a judgment that requires payment of money duly made by a Local Court and may be enforced accordingly.

(5) An order under this section is not a bar to any other proceedings by or on behalf of the person who suffered the damage or loss, but such person is not entitled to recover, in respect of such damage or loss, in total a greater amount than the amount of the damage or loss suffered by him.

(6) The powers of the Court under this section may be exercised upon the relevant charge being proved and with or without a conviction being recorded against the child.

Detention orders and imprisonment

26. (1) Subject to this section and to section 21, if a child is found guilty of an offence punishable by imprisonment, the Court may, instead of sentencing the child to a term of imprisonment, sentence the child to be detained in a detention centre for a specified period.

(2) The Court must not impose a sentence of imprisonment or make a detention order unless—

- (a) the Court is satisfied that there is no other option appropriate in the particular case; and
- (b) written reasons for imposing the sentence of imprisonment or making the detention order, as the case may be, are recorded by the Court.

(3) A child may not be sentenced to be detained in a detention centre in respect of an offence for a longer period than the maximum term of imprisonment applicable to that offence.

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 a complaint was dismissed under section 24 or in which an order (not being an order made following conviction on indictment) was made against a child under this Act or the *Child Welfare Act 1947* shall be re-heard.

(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;
- (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 re-hearing 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 re-hearing 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.

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 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. 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 and the clerk shall give effect to any such order.

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 may appear before the Court in person or by a certificated practitioner (as defined in the *Legal Practitioners Act 1893*) or by any person allowed by special leave of the Court in that proceeding.

(2) A person who is not a certificated practitioner is not entitled to claim or recover or receive, directly or indirectly, money or other remuneration for appearing or acting on behalf of another person in the Court.

Director-General may take part in proceedings

33. The Director-General of the Department for Community Services or an officer of that Department 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.

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) Where a child who is alleged to have committed an offence is before the Court and is not represented by a legal practitioner, the Court must explain to the child in simple language—

- (a) the nature of the allegations against or concerning the child and the legal implications of those allegations; and
- (b) the elements of the offence that must be established by the prosecution.

(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.

Restrictions on reports of proceedings

35. (1) 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) In the case of proceedings in any court in which a person is alleged to have committed an offence under Chapter XXII, XXXIA 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.

Disclosure of convictions, orders etc. restricted

36. 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, or to a person who as part of the person's duties is concerned with the custody or welfare of the child.

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 Director-General of the Department for Community Services, on behalf of the child, at any time after the date of the order; or
- (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 an appeal is instituted 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 the appeal is instituted under section 41 shall be deemed to be withdrawn.

(6) Where an application under this section or a notice of appeal is withdrawn, all other parties concerned shall be notified accordingly, and thereupon an appeal shall lie, 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.

Order to review certain convictions and sentences

41. 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 proceeds to convict the child of the offence, an application may be made by the child, the complainant or the Attorney General to a Judge of the Supreme Court, sitting in court or in chambers, for an order to review the finding, conviction and any order made against or in relation to the child and the provisions of the *Justices Act 1902* apply as if the finding, conviction and any order against or in relation to the child 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.

Order to review certain decisions of Court

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 the *Child Welfare Act 1947* and for the release of the child,

an application may be made 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,

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 a person has applied or is entitled to apply under subsection (1) for an order to review a finding, order, or other decision of the Court, 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 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.

Appeals to Full Court

43. (1) A child convicted by the Court, when constituted by or so as to include a Judge, may appeal to the Full Court—

- (a) against conviction on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Full Court or upon the certificate of the Judge who tried the child that it is a fit case for appeal, against conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal.

(2) An appeal may be made to the Full Court on the part of the prosecution—

- (a) against acquittal of an indictable offence;
- (b) against any judgment given on a plea that the Court has no jurisdiction to try the accused child for the offence alleged; or
- (c) against any punishment imposed or order made in respect of a child convicted of an indictable offence.

(3) A child convicted by the Court and sentenced to a term of detention in a detention centre may appeal to the Full Court with the leave of the Full Court against an order of the court under section 13J of the *Child Welfare Act 1947* that any portion of that sentence shall be served as and deemed to be a sentence of imprisonment.

(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
- (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 the *Child Welfare Act 1947* 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.

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* immediately before the repeal of that section has effect shall on the commencement of Part 2 be deemed to have been appointed a magistrate of the Court under section 10 of this Act, whether or not the person is otherwise eligible for such an appointment under that section.

(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.

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.
