

WESTERN AUSTRALIA

---

---

# CHILD WELFARE AMENDMENT ACT (No. 2)

---

No. 127 of 1987

---

AN ACT to amend the *Child Welfare Act 1947*.

[Assented to 21 January 1988]

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

## Short title

1. This Act may be cited as the *Child Welfare Amendment Act (No. 2) 1987*.

## Commencement

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

**Principal Act**

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

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

**Section 10B inserted**

4. After section 10A of the principal Act the following section is inserted—

Director-General may delegate and sub-delegate

“ 10B. The Director-General may from time to time by writing under his hand delegate to any officer of the Department any function conferred on the Director-General by, or delegated to the Director-General under, this Act and subject to this Act, but without affecting the provisions of section 59 of the *Interpretation Act 1984* as they apply to a delegation, those provisions apply to and in relation to a sub-delegation by the Director-General as though the sub-delegation were a delegation. ”.

**Section 19 amended**

5. Section 19 of the principal Act is amended in subsection (2) (a) by deleting “appointed, and may appoint any person to be a clerk of any court.” and substituting the following—

“ appointed. ”.

**Section 20B amended**

6. Section 20B of the principal Act is amended by inserting after subsection (6) the following subsection—

“ (7) Where a person who elects to have a complaint heard and determined under subsection (1) is convicted of the charge and the magistrate hearing the charge is of the opinion that for any reason the sentence or order that may be imposed on the person convicted is inadequate, the magistrate may, in lieu of passing sentence, commit the convicted person to the District Court, which may pass such sentence for the offence as might have been passed if the offender had been convicted on indictment. ”.

**Section 20C amended**

7. Section 20C of the principal Act is amended—

- (a) in subsection (1) by deleting “by Chapter XXXI of The Criminal Code”; and
- (b) in subsection (2), by deleting “Section three hundred and twenty of The Criminal Code does not apply to a complaint heard pursuant to this section, but, if” and substituting the following—

“ If ”.

**Sections 23A, 23B and 23C inserted**

8. After section 23 of the principal Act the following sections are inserted—

**Interpretation**

“ 23A. In this section and sections 23B and 23C—

“alternative procedure” means the procedure to be adopted under section 23C;

“child” means a child who has not attained the age of 16 years;

“proceedings” means—

- (a) a trial for an offence in which the accused is an adult and a child is a witness; or
- (b) the hearing of an application for a declaration that a child is in need of care and protection,

at which the respondent is represented by counsel;

“respondent”, in relation to—

- (a) a trial for an offence, means the defendant;
- (b) a hearing of an application for a declaration that a child is in need of care and protection, means any person who, under section 30 (3) (b), is deemed to be a party to the proceedings.

### Declaration by Attorney General

23B. (1) Subject to this section, the Attorney General may by notice published in the *Government Gazette* declare that a court held at any place in the State specified in the notice is a court in which the alternative procedure specified in section 23C applies in proceedings.

(2) A declaration under subsection (1) may be revoked or amended by the Attorney General by notice published in the *Government Gazette*.

(3) The Attorney General shall not declare a court at any place to be a court in which the alternative procedure applies unless the Attorney General is satisfied upon a report furnished by the Permanent Head that—

- (a) there is in the vicinity of the court held at that place a room or place set apart from the court in which the respondent can be held during the trial; and
- (b) the respondent in the proceedings can—
  - (i) view the proceedings on a closed circuit television screen;
  - (ii) hear the proceedings;
  - (iii) communicate with his counsel by some efficient means of telecommunication; and
  - (iv) be viewed by the means of the closed circuit television system by the court,

but so that the respondent is not seen or heard by a witness.

(4) Production of a copy of the *Government Gazette* containing a notice under subsection (1) is conclusive proof that the court held at a place specified in the notice is a court in which the alternative procedure applies in proceedings.

### Alternative Procedure

23C. (1) Where proceedings are conducted in any court in respect of which a declaration under section 23B is in force the respondent shall be held in a room that is set apart from the court

and in which the facilities referred to in section 23B (3) (b) are provided during the taking of evidence given by a child and before that evidence is taken the court shall explain to the child in simple terms that the proceedings will be observed and heard by the respondent on a closed circuit television screen.

(2) Nothing in subsection (1) prevents the respondent being present in the court for the purpose of identification by a child, but for that purpose only, if in the opinion of the court it is necessary for the child to identify the respondent.

(3) Notwithstanding any law or rule of practice where the alternative procedure is adopted under subsection (1) in any proceedings the proceedings shall be deemed to have been held in the presence of the respondent. ”.

### **Section 146C amended**

**9.** Section 146C of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (3) A person who on reasonable grounds and in good faith for the purposes of facilitating the enforcement of the provisions of this Act makes a report with respect to the circumstances of a child is not liable to any action for damage or any other legal proceeding in respect of that report. ”.

### **Third Schedule amended**

**10.** The Third Schedule to the principal Act is amended by deleting item 8.

### **Review and report**

**11.** (1) The Attorney General shall, commencing on the second anniversary of the commencement day, carry out a review of the operation and effectiveness of sections 23A to 23C of the principal Act as enacted by this Act and shall prepare a report based on his review of those provisions.

(2) The Attorney General shall cause the report prepared for the purpose of subsection (1) to be laid before each House of Parliament not later than 6 months after the second anniversary of the commencement day and if a House of Parliament is not then sitting, shall cause the report to be laid before such House within 6 sitting days of the House.

(3) In subsections (1) and (2) "commencement day" means the day on which section 8 of this Act comes into operation.

---