

(2) Notwithstanding any other provision of this Act, where, in the course of any proceedings before a juvenile court, it appears to the court that the proceedings should have been instituted in a court of summary jurisdiction other than a juvenile court, the following provisions of this subsection shall apply:—

- (a) The court may desist from further proceeding with the hearing of the proceedings, or it may proceed with the hearing and determination of those proceedings or, as the case requires, with the preliminary examination as a court of summary jurisdiction that is not a juvenile court:
- (b) If the court so desists, it shall by memorandum refer the proceedings for hearing and determination by an appropriate court of summary jurisdiction upon a date and at a time which shall be specified in the memorandum and notified to the parties to the proceedings:
- (c) Upon so referring the proceedings, the court may allow the defendant to go at large or remand him into suitable custody or discharge him upon his entering into a recognizance with or without sureties to appear before the court to which the proceedings have been referred upon the date and at the time so specified.

(3) The court to which any proceedings are referred under this section shall have jurisdiction to hear and determine the proceedings.

27. (1) Subject to subsection (2) of this section, a child shall not be charged in any complaint or information jointly with a person who is not a child.

Prohibition of joint charges.

(2) Subsection (1) of this section shall not apply to proceedings in which a charge against a child, is pursuant to this Act, to be heard and determined by a court other than a juvenile court.

(3) A child against whom a complaint is laid alleging that he is in need of care and control shall not be jointly charged with a child who is charged with an offence.

28. (1) Where a juvenile court, other than the Adelaide Juvenile Court, has found the offence or other matter alleged in an information complaint or charge against a child proved, and is of the opinion that it is expedient to refer the case to the Adelaide Juvenile Court in order that the child may be further dealt with by that court, the first-mentioned court may—

Reference of case to the Adelaide Juvenile Court.

- (a) adjourn the hearing, and refer the case by memorandum to the Adelaide Juvenile Court;

and

(b) transmit to the Adelaide Juvenile Court the information, complaint or charge together with the evidence, a statement of the findings of the court, and any other relevant documents.

(2) Upon so referring the case, the court may, subject to the provisions of section 30 of this Act, order that the child be brought before the Adelaide Juvenile Court on a day and at a time specified in the order.

(3) The Adelaide Juvenile Court shall consider the evidence taken by the court by which the case was so referred, the finding of that court and the reports made upon the child pursuant to any order of that court, or the Adelaide Juvenile Court, and any other relevant matters, and may make any order authorized by law in respect of the child as if the information, complaint or charge against the child had been heard and determined by the Adelaide Juvenile Court.

Attendance at court of parent, etc., of child charged with offence.

29. (1) Where a child is for any reason brought before a juvenile court, the court may order that his parents or guardian shall attend at the court before which the case is heard or determined during all the stages of the proceedings, unless sooner excused by the court.

(2) When the court makes an order under subsection (1) of this section directed to a guardian of the child who is not a parent of the child, the attendance of the father or the mother of the child, or both, may also be ordered.

(3) When the court makes an order under subsection (1) of this section, it may adjourn the hearing of the case.

(4) The clerk of court shall cause every such order to be served upon the parent or guardian named therein.

(5) The order shall be deemed sufficiently served if a notice containing a copy thereof is served personally on the parent or guardian or posted addressed to him at his last known place of abode or business a reasonable time before the date of hearing of the case.

(6) Any person who, having been served with an order under this section, fails to attend the court in compliance therewith shall be guilty of an offence and liable to a fine not exceeding one hundred dollars.

(7) Notwithstanding anything contained in this section, the court may, if it thinks it expedient and just to do so, proceed with the hearing and determination of the case in the absence of the parent or guardian.

30. (1) Notwithstanding anything contained in any other Act, where the hearing of any proceedings against a child is adjourned by a juvenile court or referred by one court to another under any provision of this Act and the child is not allowed to go at large and not released on bail, any juvenile court may, from time to time, order that the child be remanded to a home or other suitable place (not being a prison) or in the temporary custody of a suitable person, for a period not exceeding in either case, twenty-one days.

(2) A child shall not be remanded in custody to a home unless in the opinion of a juvenile court—

(a) the child is likely to abscond;

or

(b) the child is in need of care and control for the period of the remand;

or

(c) it is desirable in the interests of the child that he be remanded in custody;

or

(d) it is necessary for the protection of the general public, or any person or property, that the child be remanded in custody.

(3) This section shall not fetter in any way the discretion of a court to allow a child to go at large, or to release a child upon bail where, in the opinion of the court it is appropriate to do so.

(4) The court which makes an order under subsection (1) of this section, or the Adelaide Juvenile Court, may at any time revoke the order and in lieu thereof make another order allowing the child to go at large, or releasing him on bail, or remanding him to a home or other suitable place (not being a prison) or in the temporary custody of a suitable person, for a period not exceeding twenty-one days.

(5) Notwithstanding the foregoing provisions of this section, the court referred to in either of those subsections, if constituted of a Judge or special magistrate, may, with the consent of the child or of the parent or guardian of the child, order that the child be remanded for a period exceeding twenty-one days but not exceeding thirty-five days.

31. (1) Where a justice is satisfied by the evidence of a legally qualified medical practitioner that the attendance before a court of any child in respect of whom an offence is alleged to have been committed would involve serious danger to his life or health, the justice may take in writing the deposition of the child, and shall

thereupon sign the deposition and add thereto a statement of his reasons for taking it and of the day when and the place where it was taken and of the names of the persons (if any) present at the taking thereof.

(2) The justice shall, if the child is of or over the age of ten years, take the deposition on oath.

Admission of
a deposition in
evidence.

32. Where, in any proceedings in any court in respect of an offence against a child, the court is satisfied—

(a) by the evidence of a legally qualified medical practitioner that the attendance before the court of the child would involve serious danger to his life or health;

or

(b) that the child is dead,

any deposition of the child taken pursuant to section 31 of this Act shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the justice by or before whom it purports to have been taken; but the deposition shall not be admissible in evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been served upon him and that he or his counsel or solicitor had, or might have had, if he had chosen to be present, an opportunity of cross-examining the child making the deposition.

Examination
as to mental
condition of
child.

33. A juvenile court before whom a child is brought may, if it has reason to suspect that the mental condition of a child is such as to affect the criminal responsibility of the child, cause the child to be examined by a properly qualified person, and may accept as evidence the written or oral report (whether on oath or otherwise) of that person as to the child's mental condition.

SPECIAL PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF COMPLAINTS, ETC.

Duty of court
to explain
proceedings,
etc.

34. Where a child in respect of whom proceedings have been brought before a juvenile court, is not represented by counsel or solicitor, the court—

(a) shall satisfy itself that the child understands the proceedings and shall, if necessary, explain to him in simple language the nature of the allegations against him, including their legal implications, such as the intention to commit the offence, but no particular form of words shall be necessary;

and

(b) may ask the child questions to elicit his version of the facts and may cross-examine any witnesses,

but no order or adjudication of a court shall be regarded as invalid or defective on the ground only of failure to comply with this section.

35. (1) Where a child is charged before a juvenile court with any indictable offence or offences (other than homicide), the child at any stage of the proceedings, and whether any statement has been taken from any witness or not, may plead guilty to the charge or any of the charges laid against him.

Power of juvenile court to take plea of guilty to an indictable offence by child.

(2) The court shall, at the commencement of the proceedings, inform the child and his parent or guardian (if present) of the child's right so to plead, and may, if it thinks fit, make a statement explaining the procedure under this section.

(3) Where a child pleads guilty pursuant to this section, the procedure of the court shall, subject to this Act, be the same as the procedure of a court of summary jurisdiction, and the provisions of the Justices Act, 1921-1969, shall, so far as they are applicable and not inconsistent with this Act, apply to and in relation to the hearing and determination of the charge.

(4) If, after the child has so pleaded guilty, the court after consideration of any facts stated by the prosecutor or given in evidence, is of the opinion that the time for taking the plea should be postponed, it may order that the plea of guilty be withdrawn; and thereupon all further proceedings in respect of the offence shall, subject to this Act, be conducted in accordance with this Act and the Justices Act, 1921-1969, as if the child had not so pleaded guilty.

(5) If any such further proceedings are taken, the child shall not, by reason of his plea of guilty be entitled to plead *autrefois convict*.

36. (1) Where a child appears before a juvenile court constituted of a Judge or special magistrate on an information charging the child with an indictable offence (other than homicide) to which the child does not plead guilty, the court may, subject to this Act, hear and determine the matter before the court in a summary way or proceed to hold a preliminary examination in respect of the alleged offence.

Procedure where child charged with indictable offence does not plead guilty.

(2) Before exercising his discretion under subsection (1) of this section, the Judge or special magistrate constituting the court shall—

(a) explain to the child and his parent or guardian (if present) the relative implications of the matter being dealt with in a summary way and of committing the child for trial before the Supreme Court or the District Criminal Court and give them an opportunity of making representations for the consideration of the Judge or magistrate;

and

(b) have regard to the nature of the charge, the age of the child, the circumstances of the case and the representations made by or on behalf of the child or his parent or guardian or by the prosecutor or an officer of the department.

(3) The matter shall be heard and determined in a summary way unless the Judge or special magistrate is satisfied having regard to all the facts and circumstances known to the court, that it is desirable, in the interests of the administration of justice, to commit the child for trial to the Supreme Court or the District Criminal Court.

(4) Where a child appears before a juvenile court constituted of justices or a special justice on an information charging the child with an indictable offence (other than homicide) to which the child does not plead guilty, the justices or special justice shall desist from further proceeding with the hearing and shall, by memorandum, refer the proceedings for hearing before a juvenile court constituted of a Judge or special magistrate upon a date and at a time specified in the memorandum and notified to the parties.

(5) The court so referring the proceedings may, subject to the provisions of section 30 of this Act, make an order that the child be brought before the court to which the proceedings have been referred on a day and at a time specified in the order.

Alternative
verdict.

37. Where an information charging a child with an indictable offence is heard and determined in a summary way by a juvenile court and, if that offence were tried before the Supreme Court, that court would have power to record an alternative verdict to the offence charged, the juvenile court may record an alternative verdict to the offence with which the child is charged.

Procedure on
committal for
trial.

38. Where—

(a) a child charged on information with an indictable offence before a juvenile court does not plead guilty of that offence;

and

(b) the court does not decide to hear and determine the proceedings in a summary way,

the court shall hold the preliminary examination and, subject to this Act and the appropriate provisions of the Justices Act, 1921-1969, commit the child for trial before the Supreme Court.

39. (1) Subject to this section, a juvenile court constituted of a Judge or special magistrate which has found a child guilty of an indictable offence (other than homicide) following a plea of guilty or a summary hearing and determination may deal with the child in accordance with the powers of the court under this Act, or may commit the child to the Supreme Court.

Power of juvenile court to sentence child for indictable offence or commit to Supreme Court for sentence.

(2) Before exercising his discretion under subsection (1) of this section, the Judge or special magistrate constituting the court shall—

(a) explain to the child and his parent or guardian (if present) the nature of the discretion vested in the court and the relative implications of the child being dealt with in accordance with the powers of the juvenile court under this Act and of committing the child to the Supreme Court for sentence and give them an opportunity of making representations for the consideration of the Judge or special magistrate;

and

(b) have regard to the nature of the charge, the age of the child, the circumstances of the case and the representations made by or on behalf of the child or his parent or guardian or by the prosecutor or an officer of the department.

(3) The juvenile court shall deal with the child in accordance with the powers of the court under this Act unless the court is satisfied, having regard to all the facts and circumstances known to the court, that it is desirable, in the interests of the administration of justice, to commit him to the Supreme Court for sentence.

(4) Where a child who has pleaded guilty before a juvenile court to an indictable offence is committed to the Supreme Court for sentence—

(a) the juvenile court shall make written notes of the facts stated by the prosecutor and of any statement made by the defendant in contradiction or explanation of the facts stated by the prosecutor and shall forward those notes to the Attorney-General together with the statements (if any) of witnesses tendered by the prosecutor to the court;

and

(b) the Attorney-General shall cause the notes and the statements of witnesses to be delivered to the proper officer of the Supreme Court at the place where the child is to appear for sentence, before or at the opening of that court on the first sitting thereof, or at such other time as the Judge who is to preside in such court may order.

(5) Where a child who has been found guilty of an indictable offence following a summary hearing and determination is committed to the Supreme Court for sentence—

(a) the juvenile court shall forthwith forward the record of the case, or cause it to be delivered, to the Attorney-General together with the information, evidence, a statement of the finding by the court and other relevant documents (if any);

and

(b) the Attorney-General shall cause the record, information, evidence, statement and other relevant documents (if any) to be delivered to the proper officer of the Supreme Court at the place where the child is to appear for sentence, before or at the opening of that court on the first sitting thereof, or at such other time as the Judge who is to preside in that court may order.

(6) Upon the appearance of the child for sentence before the Supreme Court, that court may pass sentence or otherwise deal with him as if he had been committed for trial to that court and had pleaded guilty or been found guilty (as the case may be) in that court, and all the same consequences shall ensue as if he had been so committed and had so pleaded guilty or been found guilty; but if, for any reason, it appears to the Judge of that court that the plea of guilty, if any, should be withdrawn, he may advise the child, and allow him, to withdraw the plea and, if it is thereupon withdrawn, the child shall be deemed to have been committed for trial, and may forthwith, or after adjournment, and notwithstanding that no information has been filed in that court, be arraigned, and the case shall proceed in the usual course.

Remand on committal.

40. Where a child is committed by a juvenile court to the Supreme Court for trial or sentence, the juvenile court may release the child on bail or remand him to a home or to any other suitable place (not being a prison) to be there detained until he is released or delivered in due course of law.

Power to order examination, etc., of child.

41. (1) Where a child has pleaded guilty before a juvenile court, or the court has found that the offence with which the child is charged or other matter alleged against the child is proved, the court—

(a) may order that the child attend at an assessment centre, or if he has been remanded in custody, that he be taken to an assessment centre, so that he may be examined and an assessment made of his personal circumstances and social background and the most appropriate means of rehabilitating him;

and

(b) may order that such further examinations and reports be made or prepared as the court thinks fit.

(2) The court may consider and act upon any report on the child prepared under subsection (1) of this section and any other report on the child's character, conduct, upbringing, physical condition and past history, if the report is prepared by a person to whom those matters are personally known or who has personally investigated those matters; but, subject to subsection (3) of this section, before passing any sentence on the child—

(a) so much of the contents of any such report as is detrimental to the child shall be made known to the child or his parent, guardian, counsel or solicitor if the child, parent, guardian, counsel or solicitor so requests;

(b) the child or his parent, guardian, counsel or solicitor shall, if he so requests, be given an opportunity of cross-examining the person who prepared the report on the matters dealt with therein;

and

(c) the court shall, if so required by the child, or his parent, guardian, counsel or solicitor, procure the attendance of that person before the court for cross-examination.

(3) Notwithstanding anything contained in subsection (2) of this section, the court, if it is of the opinion that the report contains material which, if disclosed to the child, or his parent or guardian, may be prejudicial to the welfare of the child, may in its discretion order that the whole or any part of the report shall not be made known to the child, or his parent or guardian.

(4) Until the examination of the child has been completed, or a report required by the court has been procured, the court or a justice may, from time to time, adjourn the hearing and subject to section 30 of this Act, remand the child into suitable custody.

42. (1) Subject to the provisions of this section, a complaint alleging that a child is in need of care and control shall be heard and determined by a juvenile court in accordance with the following provisions:—

Complaint that child is in need of care and control.

- (a) When hearing a complaint alleging that a child is in need of care and control, the juvenile court shall first proceed to hear and determine the allegation that the child has committed an offence.
- (b) On being satisfied, either by an admission or upon proof, that the offence alleged against the child has been proved, the court shall record that finding and proceed to hear and determine the allegation that the child is in need of care and control.
- (c) The court, on being satisfied on the balance of probabilities, either by admission or upon proof, that the child is in need of care and control of a kind that may be provided by the court under this section, shall record its finding that the complaint laid against the child has been proved.
- (d) When hearing the allegation that a child is in need of care and control—
 - (i) the court shall not be bound by the laws or rules of evidence and may admit any evidence which, in the opinion of the court, will assist to determine the allegation in a manner that appears to the court to be in the best interests of the child;

and

 - (ii) the court shall determine the allegation in a manner that appears to the court to be in the best interests of the child.

(2) When a juvenile court makes a finding that a complaint alleging that a child is in need of care and control has been proved, no conviction shall be recorded, but the court may make an order or adjudication in accordance with the following provisions:—

- (a) upon being satisfied that no further order is necessary or desirable to secure adequate care and control for the child, it may dismiss the complaint and discharge the child;
- (b) it may discharge the child upon his entering into a recognizance, with or without sureties, upon condition that he will be of good behaviour and will appear, if so required by a juvenile court, before the court to be further dealt with by the court, and upon any one or more of the following conditions that the court may think fit to include in the recognizance—
 - (i) that he will be under the supervision of an officer of the Department nominated by the Director-General and obey the directions of that officer;

(ii) that he will attend a youth project centre at such times as may be stipulated in the recognizance or required of him by the Director-General and will obey any directions that may be given him by or on behalf of the person in charge of the centre;

and

(iii) any other conditions that the court may think necessary or desirable;

or

(c) place the child under the care and control of the Minister for a period of not less than one year but expiring on or before the day on which the child attains the age of eighteen years.

(3) A recognizance under subsection (2) of this section shall be effective for a period, not exceeding two years, specified in the recognizance.

(4) Where an order is made placing a child under the care and control of the Minister, the court may make an ancillary order committing the child to a home for a period not exceeding twenty-one days.

43. (1) Subject to this Act, where it is alleged that a child has committed an offence and that child had attained the age of sixteen years but had not attained the age of eighteen years on the date of the alleged offence, proceeding in respect of the alleged offence shall be heard and determined before a juvenile court.

Manner in which alleged offences committed by child over age of 16 years are to be dealt with.

(2) On finding a charge proved, either by admission, or upon proof, a juvenile court may, subject to this section, make an order or adjudication in accordance with the following provisions:—

(a) upon being satisfied that no further order is necessary or desirable to secure adequate care and control for the child, the court may dismiss the charge and discharge the child;

(b) upon convicting the child or without convicting the child, the court may order the child to pay a fine not exceeding one hundred dollars, or if a lesser maximum fine is prescribed for the offence, a fine not exceeding that maximum;

(c) upon convicting the child, or without convicting the child, the court may discharge the child upon his entering into a recognizance, with or without sureties, upon condition that he will be of good behaviour and will appear, if so

required by a juvenile court to be further dealt with by the court, and upon any one or more of the following conditions that the court may think fit to include in the recognizance—

- (i) that he will be under the supervision of an officer of the Department nominated by the Director-General, and obey the directions of that officer;
- (ii) that he will attend a youth project centre at such times as may be stipulated in the recognizance or required of him by the Director-General and will obey any directions that may be given him by or on behalf of the person in charge of the centre;

and

- (iii) any other conditions that the court may think necessary or desirable;

or

- (d) upon convicting the child, or without convicting the child, place him under the care and control of the Minister for a period, specified by the court, of not less than one nor more than two years.

(3) Where an order is made placing a child under the care and control of the Minister, the court may make an ancillary order committing the child to a home for a period not exceeding twenty-one days.

(4) The court may exercise its powers under both paragraph (b) and paragraph (c) of subsection (2) of this section in respect of the same offence.

(5) A recognizance under subsection (2) of this section shall be effective for a period, not exceeding two years, specified in the recognizance.

(6) The court shall, before dealing with a child under this section, have regard to all the facts and circumstances relating to the child and the offence that are known to the court, and the court may exercise its discretion on the question of penalty as provided by this section without being bound by a minimum penalty (if any) prescribed in any Act for the offence proved against the child.

Report from
assessment
centre.

44. Where a child has not previously been placed under the care and control of the Minister, or required under the terms of a recognizance to attend a youth project centre, he shall not be placed under the care and control of the Minister or so required to attend a youth project centre unless the juvenile court has pursuant to the provisions of this Part obtained a report from an assessment centre as to the most appropriate means of rehabilitating the child.