CHILDREN'S SERVICES ACT

Working Paper 15

Queensland Law Reform Commission
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QUEENSLAND

LAW REFORM COMMISSION

CONFIDENTIAL

WORKING PAPER ON AN EXAMINATION OF THE PROCEDURE AND PRACTICE IN CHILDREN'S COURTS AND ON A BILL TO AMEND THE CHILDREN'S SERVICES ACT 1965 - 1974

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In May, 1976 the former Chief Stipendiary Magistrate, Mr. V.F. Haupt was seconded to the Law Reform Commission to examine and report, among other things, on the procedure and practice in Children's Courts.

As a result of this examination a draft bill has been prepared providing for amendment of the Children's Services Act 1965-1974 together with an explanatory commentary. Neither the draft bill nor commentary which this working paper contains represents the final views of the Commission.

The working paper is being circulated to persons and bodies known to be interested in these matters, from whom comment and criticism are invited. It is circulated on a confidential basis and recipients are reminded that any recommendations for the reform of the law must have the approval of the Governor in Council before being laid before Parliament. No inferences should be drawn as to any Government Policy.

It is requested that any observations you may desire to make be forwarded to the Secretary, Law Reform Commission, P.O. Box 312, North Quay, Queensland, 4000, so as to be received no later than Friday, 22nd April, 1977.

D.G. Andrews

(D.G. Andrews)
CHAIRMAN.

23rd December, 1976

CHILDREN'S SERVICES ACT
AMENDMENT BILL

COMMENTARY

General Introduction

The Children's Services Act 1965 - 1974 has now been in operation for ten years. Designed to promote, safeguard and protect the well-being of the children and youth of the State, at the time the Act was introduced it represented a major legislative advance in its sphere. Amendments in 1970, 1971 and 1973 aimed at correcting some weaknesses and generally up-dating the Act. However so far as it prescribes court practice and procedure it has remained as when assented to on 23rd November, 1965.

Since that date two Australian States have introduced new legislation to consolidate and amend the law relating to the commission of offences by young persons, and to neglected and uncontrolled children, namely the Juvenile Courts Act 1971 (South Australia) and the Children's Court Act 1973 (Victoria). It is noteworthy that each of these two States has retained a separate Welfare Act.

The primary purpose of this study is to rationalise and up-date the practice and procedure in Children's Courts which, to say the least, has proved to be unwieldly and generally incomprehensible to child offenders and their parents.

The report of the Commission of Inquiry into the Nature and Extent of the Problems Confronting Youth in Queensland, published on 28th November, 1975, commented on various sections of the Children's Services Act and made a number of recommendations. That report is being given full consideration and the recommendations will be referred to in this paper specifically in relation to the sections to which they have application. The Commission of Inquiry report deals at some length with the establishment within the Queensland Police Force of the Juvenile Aid Bureau in 1963 and the Education Liaison Unit in 1973 and recommends that the practice of official police cautioning be established at law.

During 1975 seven reports were submitted to the Minister for Youth, Ethnic and Community Affairs in New South Wales by five project teams, by Judge A.G. Muir of the New South Wales District Court and by a review committee. These reports recommended that Youth Aid Panels take over the jurisdiction of children's courts in respect of first offenders and in all cases in which children have been involved in minor offences. A very useful commentary on the reports is provided in an article in 50 A.L.J. p.68 by Helen Gamble LL.M. (A.N.U. Canberra) wherein she refers

to numerous reports and publications dealing with children's courts systems.

A paper entitled "The Concept of the Children's Court in Tasmania" by Bernard C. Cairns (Lecturer in Law at the Tasmanian College of Advanced Education) was published in 49 A.L.J. p.275. In it he mentions that in the Scandinavian countries and in Scotland the legislature has opted for the "juvenile panel system".

In December, 1969 at the request of the Minister of Social Welfare in South Australia the Social Welfare Advisory Council investigated the working of the Juvenile Courts Act and other legislation relating to juvenile offenders. It received submissions from a large number of people and organisations, and considered legislation and social measures enacted and contemplated in many countries. It accepted the concept contained in the following statement in a White Paper entitled "Children in Trouble" published in England in April, 1968 commenting on the conflicts between the rights of the young offender and the rights of society:

> "Over recent years these two quite distinct grounds for action by society in relation to young people have been moving steadily closer together. It has become increasingly clear that social control of harmful behaviour by the young, and social measures to help and protect the young, are not distinct and separate processes. The aims of protecting society from juvenile delinquency, and of helping children in trouble to grow up into mature and law-abiding persons, are complementary and not contradictory."

The Council reported to the Minister in May, 1970, and its recommendations might best be summarised as -

a. non-judicial arrangements for dealing with first offenders,
b. establishment of an Assessment Centre for fuller assessment of some offenders, especially recidivists,
c. altered arrangements for children up to 14 years of age, and
d. short term treatment in Attendance Centres.

Following these recommendations Juvenile Aid Panels were provided in the Juvenile Courts Act 1971. We consider it is desirable that similar provision be made in Queensland.

The need for additional Assessment Centres and Attendance Centres was referred to in the report of the Queensland Commission of Inquiry and we have no reason to disagree with its recommendation.

Section 30 provides for the establishment of such centres by Order in Council.

We recommend that the Children's Services Act 1965 - 1974 be amended principally in three major areas, by providing for:-

1. The establishment of Juvenile Aid Panels;
2. Children's Courts to be constituted by specially appointed Magistrates only; and
3. The right of election by a child and his parent or guardian in respect of a charge of an indictable offence to be abolished.

JUVENILE AID PANELS

The introductory remarks have drawn attention to the growing awareness in some Australian States and overseas of the role that Panels might take in child welfare matters. Childhood is a formative stage of life and existing legislation recognises that children are entitled to some special consideration in respect of breaches of the law and that courts have a duty to deal with such children in a manner calculated to assist them to live a law-abiding, happy and useful life in the community. There may be a tendency for a child to be embittered by a court appearance and also a temptation to identify himself as a criminal. Detailed statistics are not available but we believe that a very large majority (possibly about 80%) of first offenders do not offend again. Quite clearly in most such cases court procedures are unnecessary and inappropriate. In addition to the obvious advantages to and protection of child and parents by a Panel procedure, the practical result would be a substantial reduction in the work-load in the Children's Court thus enabling that court to devote more time to the problems posed by more serious offences and hard-core offenders.

Judge Muir in his report identified two of the worst features of the Children's Court system in New South Wales as (i) the tendency of the appearance in court to stigmatise the child, and (ii) the pressure of business in some courts which severly limits the time available for a full assessment to be made of the individual case.

We envisage that a Panel could readily be constituted at every place appointed as a place for holding a Magistrates Court pursuant to the Justices Act 1886 - 1975. It is desirable that members of the Panel be local residents so they would have a knowledge of the district and an understanding of social problems in that place. The

panel would have limited powers in dealing with a child and as its function is not judicial it would not have the responsibility for determining guilt. It should be able to deal satisfactorily with the majority of matters presently being taken before the Court, particularly those which might ordinarily be disposed of by an order "admonished and discharged", and it would refer to the Court any matters which it considers it cannot deal with adequately, or in respect of which the child and/or his parent does not appear or, having appeared, request that the matter be heard and determined by a Children's Court. A child arrested and charged must be taken before a court but the court has a discretion to refer the matter to a Panel to be dealt with.

The primary concern of the Panel must always be the welfare of the child founded on an appreciation that it is dealing with a youngster in need of help, not an offender requiring punishment. The procedure must be personalised, not stereotyped, aimed at establishing dialogue with and encouraging participation by parents and child in order to ascertain amongst other things the personality of the child. It is hoped that any social stigma which attaches to a child, his parents or other members of his family as a result of a court appearance would thus be avoided.

A panel would comprise two persons who are included in a list to be approved by the Minister. Having in mind the remote towns in Queensland where it would be necessary from time to time to constitute a Panel, the list should comprise names and addresses of (a) officers of the Police Department nominated by the Commissioner of Police, (b) officers of the Department nominated by the Director and (c) such other persons who, in the opinion of the Minister, possess special qualifications in relation to child welfare. This should ensure that at least two persons would be available to constitute a Panel at every place appointed pursuant to the Justices Acts as a place for holding a Magistrates Court.

CONSTITUTION OF CHILDREN's COURTS

By section 20 of the Children's Services Act 1965 - 1974 a Children's Court shall be constituted by a Magistrate of Children's Courts sitting alone, or if he be not then present, by a Stipendiary Magistrate or an Acting Stipendiary Magistrate sitting alone, or if neither of such magistrates be then present, by two or more justices.

It is proposed that a Children's Court be constituted only by a Magistrate of Children's Courts sitting alone. As far back as 1965 in Queensland the legislature indicated its appreciation of the

desirability of a special magistrate to constitute Children's Courts. Similar recognition is indicated in the legislation of all other States in Australia by provision for appointment of special magistrates of children's courts and, as in Queensland, all provide that in the absence of a special magistrate the court may be constituted by a stipendiary magistrate or two justices.

The exercise of jurisdiction given to Children's Courts requires a special ability if not special qualifications. It may be almost impossible to define specific qualifications. Cavenagh in "Juvenile Courts, the Child and the Law" (1967) refers to a British Government report where the qualities which are needed in every Children's Court Magistrate are described as "a love of young people, sympathy with their interests, and an imaginative insight into their difficulties. The rest is largely common sense." A magistrate dealing exclusively with Children's Court matters should engender greater public confidence than a magistrate who, irrespective of experience or qualifications, devotes only five to ten per cent of his time to Children's Courts.

Section 19 provides that "The Governor in Council ... may appoint such number of Magistrates of Children's Courts as he considers necessary to effect the objects of this Act." Only one has been appointed and his time is almost fully occupied in Brisbane. The suggested establishment of Juvenile Aid Panels should substantially reduce the number of offenders appearing in the Brisbane Court and thus allow the Magistrate to visit an increased number of outside Courts.

We propose that another three Magistrates of Children's Courts be appointed making four in all, two to be stationed in Brisbane and one each in Rockhampton and Townsville. Each would arrange a Circuit according to requirements. The Act provides that a Children's Court may be constituted at every place for the time being appointed for holding Magistrates Courts pursuant to the Justices Acts. We propose that a Juvenile Aid Panel be available at every such place, but do not envisage that the Magistrate of Children's Courts should find it necessary to constitute a Court other than possibly those towns on a District Court circuit, to which children could be referred by the Panel or remanded by local justices as the case may be.

All Children's Court matters in Brisbane are dealt with by one Magistrate of Children's Courts with only occasional assistance by another Stipendiary Magistrate assigned for that purpose. It is of interest to note that in Adelaide, where the Juvenile Aid Panel has operated since 2nd July, 1972, there were last year four Judges of Juvenile Courts of whom three sit almost every day in the City and the

other visits suburban and nearby country Courts one day each week or as required. Prior to the appointment of Mr. R.T. Matthews as the first Magistrate of Children's Courts in 1966 under section 19 the Children's Court in Brisbane was constituted by a magistrate from the Metropolitan Bench which then comprised twelve magistrates. In all provincial cities and country towns throughout the State a Children's Court was constituted as required by the resident Stipendiary Magistrate or by two justices. For a few years Mr. Matthews was able to visit on a roster system centres from Southport north to Bundaberg and west to Toowoomba. As the volume of work in Brisbane increased such visits had to be curtailed and finally restricted to some Brisbane Division courts and the courts at other centres reverted to the resident magistrates.

As an indication of the increased volume of magistrates court work, which would apply equally to the Children's Court, there are now seventeen Stipendiary Magistrates in Brisbane plus three relieving magistrates, resident magistrates at Wynnum, Sandgate, Redcliffe, Inala Holland Park and Beenleigh which areas were previously serviced from Brisbane, and two Referees of the Small Claims Tribunal which handles many claims which otherwise would have been brought in the Magistrates Court. We consider that the recommendation for two Magistrates of Children's Courts to be stationed in Brisbane, one of whom would be occupied full time in centres throughout Southern Queensland, plus one each to service courts in the Central and Northern divisions of the State, is certainly not extravagant. In fact they could only prove adequate with the successful implementation of the Panel system.

We also propose and recommend that a properly qualified Social Worker be appointed to the staff of each Children's Court Magistrate to assist in any way that he might require and to be detailed to travel to such places as may be necessary to act as one of the members of a Juvenile Aid Panel to be there constituted.

JURISDICTION OF CHILDREN'S COURT

The Children's Court at present has jurisdiction to deal with any child charged with a simple offence and with any indictable offence other than one for which he would be liable, were he not a child, to imprisonment with hard labour for life. However the Children's Court cannot exercise this jurisdiction in relation to indictable offences unless

(a) the right to be tried before a judge and jury has been explained to the child and such parent or guardian as is present; and

(b) the child and such parent or guardian consent to being dealt with by the Children's Court; and

(c) the circumstances of the case and of the child are such that the case may be adequately dealt with by the Children's Court.

In practice the court is required to proceed as in committal proceedings at least until it has evidence of a prima facie case before calling on child and parents to elect.

Apart from the time occupied, and the incidental expense of calling witnesses, and the unnecessary inconvenience caused to witnesses in cases where the child wishes to plead guilty and to be dealt with, the procedure must be at least extremely confusing to the child and parent.

In Victoria, by section 15 of the Children's Court Act 1973 the right of election must be explained before any evidence is taken.

Victoria is the only State other than Queensland to retain the general right of election in respect of indictable offences, i.e. the child if he is 15 years of age or over, or his parent if he is under 15, may object to him being tried in a Children's Court. In New South Wales and in South Australia the child or parent has no right of election, but the Children's Court has a discretion to refrain from dealing summarily and to commit for trial. The Child Welfare Act 1947 (Western Australia) gives the Court exclusive summary jurisdiction, with a discretion to commit for trial a child over the age of fourteen years. In Tasmania it is provided that the Court shall deal summarily with a child whose age does not exceed fourteen years, but where the age exceeds fourteen years in respect of prescribed offences, it shall commit for trial. In some other cases, the child or his parent may elect trial by jury. In England the Children and Young Persons Act 1969 abolished the right of juveniles to claim trial by jury but retained in the court a duty to commit in certain circumstances.

The 1975 Report of the Commission of Inquiry recommended the adoption of the Victorian procedure, which undoubtedly is preferable to our present procedure. We agree that some change is overdue. Other States have probably been influenced by a factor not yet mentioned, that is the capability or capacity of child and parent in the, to them, traumatic circumstances to sufficiently comprehend the alternatives offered and to make a reasoned election.

Having due regard to our proposal that theCourt should be constituted only by a specially appointed Magistrate, we consider that the discretion should vest in the Court. The Magistrate is in a far better

position and is more competent to decide, after hearing the evidence or the allegations, whether it is in the best interest of the child that he should determine and dispose of the charge summarily or commit him. We propose, and strongly recommend, that the Children's Court shall have jurisdiction to hear and determine summarily all charges other than those punishable on conviction by imprisonment with hard labour for life, with a discretion to refrain from doing so where the circumstances of the case and of the child are such that he cannot be adequately dealt with by the Children's Court, or where the Court considers that in the interest of justice the child should be committed to a higher court.

In making this recommendation we are influenced by the very obvious need to improve the practice and procedure in Children's Courts, whilst keeping in mind at all times the welfare of the child concerned. The first impression may be that the proposed change is revolutionary, but this is not so. Instances coming readily to mind where our legislation does not give to a person charged a right of election are:-

(1) charges under section 328A of the Criminal Code where the Magistrates Court has the sole discretion whether to proceed summarily;
(2) charges under section 130 of the Health Acts, where the prosecution elects whether to proceed summarily or on indictment (the Court retains the right to commit despite the election of the prosecution); and
(3) section 342 of the Criminal Code which requires that justices abstain from dealing summarily with charges of assault if they are of opinion that the charge is a fit subject for prosecution by indictment.

It might be suggested that removal of the right to elect trial by jury vests too great a power in the magistrate in relation to the liberty of an offender. The orders he may make are set out in section 62. Under paragraph (g) a committal to care and control of the Director is limited to a period not exceeding two years, whereas under section 61 on application by an officer of the Department, by a police officer or by a parent or guardian of a child the Children's Court may order that the child be committed to the care and control of the Director until he attains the age of 18 years. If imprisonment is ordered under section 62(1)(i) - (an order which would be rarely made) it is limited to a period not exceeding two years. In a Magistrates Court imprisonment up to two years may be ordered under Section 130 of the Health Acts, and up to 18 months under section 16 of the Traffic Acts.

It has been suggested in some papers concerning juvenile courts that often a plea of Guilty is tendered, usually on the advice of or at the urging of the parent, as a matter of expediency with the one thought of getting the charge finalised and out of the Court as quickly as possible. No doubt this will occur despite any safeguards or legislative provisions, and it could occur in a District Court or the Supreme Court as well as in the Children's Court. In the Magistrates Court such pleas of expediency are not uncommon and, being mindful of the provisions of section 145 of the Justices Acts, experienced Magistrates have adopted a practice of receiving a plea of Guilty but not formally accepting and recording it as such and entering a conviction until after hearing the prosecutor and the defendant. If there is any doubt as to the bona fides of the plea, it is not accepted and an order made that a plea of Not Guilty be entered. A similar practice would be followed in the Children's Court which has the advantage of not having the requirement "If the defendant pleads guilty, the Magistrates Court shall convict him..." to avoid. The provisions of subsections (4) and (5) of section 35 of the South Australian Juvenile Courts Act are relevant to procedure in similar circumstances but we consider need not be enacted in our Act.

The Family Law Act 1975 came into operation on 5th January, 1976. It was obvious that custody, guardianship or maintenance of a child who is not "a child of the marriage" did not come within the scope of that Act, but uncertainty existed as to the validity of certain provisions of the Act. In the light of that constitutional uncertainty two matters, Russell v. Russell and Farrelly v. Farrelly, were removed to the High Court pursuant to section 40A of the Judiciary Act. It is not necessary for the purposes of this paper to discuss, or to attempt to summarise, the decision of the High Court.

It may be assumed that certain provisions in the Family Law Amendment Act 1976, which was assented to on 8th June, 1976, resulted from the High Court decision.

We have found it necessary to consider how the Family Law Act 1975 - 1976 may affect the provisions of the Children's Services Act 1965 to 1974 in relation to guardianship, custody and maintenance of infants.

Section 8 of the Family Law Act provides -

"(1) After the commencement of this Act -

(a) proceedings by way of a matrimonial cause shall not be instituted except under this Act; and "

The relevant portion of the definition of "matrimonial cause" in section 4(1), as now amended, is -

> ""matrimonial cause" means -
> " (c) proceedings between the parties to a marriage with respect to -
> " (i) the maintenance of one of the parties to the marriage; or
> " (ii) the custody, guardianship or maintenance of, or access to, a child of the marriage;
>
> " (ca) proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them, being proceedings in relation to concurrent, pending or completed proceedings for principal relief between those parties;
> " (cb) proceedings by or on behalf of a child of a marriage against one or both of the parties to the marriage with respect to the maintenance of the child;";

We consider that no amendment of Part IX of the Principal Act will be necessary.

1. Short title and citation. Clause 1 of the Bill provides the Short Title and Citation.

2. Amendments to s.2. Clause 2 provides for re-arrangement of the Act to allow the introduction of Juvenile Aid Panels by inserting a new Part III and the renumbering of existing Parts III to XIII.

3. Amendment to s.8. Clause 3 inserts a new definition "Juvenile Panel" in section 8.

Part II of the Principal Act is unchanged.

4. New Part III - Juvenile Aid Panels. Clause 4 provides a new Part III, with sections numbered from 17A to 17K, introducing into the Act the new concept of Juvenile Aid Panels. This concept is based on Part II of the Juvenile Courts Act 1971 of South Australia, the only State so far to legislate for Panel procedures in respect of children under 16 years. At page 21 of its report in 1975 the Queensland Commission of Inquiry recommended "that the practice of official police cautioning be established at law and that this procedure apply to all young offenders under the age of fifteen years in respect of whom the police have not previously obtained credible evidence of the commission of an offence and that the caution be administered in respect of all offences which may be dealt with summarily".

We have considered this recommendation in depth. It embraces four points -

(1) cautioning in lieu of prosecution
(2) of offenders under the age of 15 years
(3) who can be properly regarded as "first offenders"
(4) in respect of any offence which might be dealt with summarily.

We entirely agree with the ideology of saving as many young persons as possible, and particularly first offenders, from the probable stigma of a court appearance. The provisions of the South Australian Act apply to children under 16 years and this limit is undoubtedly fixed because under the law in that State no child under sixteen may be convicted of a criminal offence. The Commission of Inquiry in arriving at a limit of 15 years considered that the practice of cautioning is essentially one that is used for young offenders, so that some age limit has to be imposed. Criminal liability of children is covered by section 29 of the Criminal Code. All provisions of the Children's Services Act apply to all children, and a "child" is defined as a person under or apparently under the age of seventeen years. In considering whether a child should be dealt with otherwise than by a court, we are convinced that the most important factor

is not the age of the child but the nature and circumstances of the offence and the history and background of the child. We consider that any "child" who has not been arrested should have the opportunity to appear before a Panel which after considering the allegations could, where it considers it necessary, refer the matter to a court.

The new Part III deals with -

(1) the composition of the panels;
(2) their jurisdiction, procedures and powers; and
(3) their relation to the Children's Court.

We have endeavoured to arrange these matters in that order. The proposed sections 17A and 17B provide for the establishment and constitution of panels. A study of the panel system after it had operated for two years in South Australia was undertaken on behalf of the Department of Community Welfare by a team comprising a Social Planner, a Youth Consultant, a Psychologist, and a Social Worker and a Research Worker employed by the Department. Their report published in January 1975 states "A key factor in the success of panels relates to the membership of panels. Each panel, consisting of a police officer and a social worker, working as a team, has been found to operate satisfactorily." The report concludes -

> " It is obvious from the study that the aims of Juvenile Aid Panels have the potential for fulfilment. Certainly the panel system is a significant improvement in the treatment process over previous procedures relating to young offenders. They have provided a flexible alternative to Juvenile Court proceedings and are capable of providing support and assistance to the child within his family and the community. Panels enable offenders and other children in trouble an opportunity of avoiding the stigma and labelling effect which previously resulted from formalities of court appearances. The non-stigmatizing effect of panels must be very carefully protected from future erosion if the panels are to maintain their current value in this regard. Panels also provide a sensitive approach to the helping of young people, with a minimum of delay.
>
> During the first two years of panel operation, over 80 per cent of all young people did not re-offend. It is not possible to assess the full reasons for this, but it is believed official intervention certainly played a significant part. One of the most useful factors with official intervention is that the child's behaviour is discussed and necessary adjustments can be made, particularly in the matter of relationship

between parents and child. It is hoped that ongoing development of the diagnostic and helping skills of the panel members will further reduce the rate of re-offending."

The proposed sections 17C, 17D and 17E provide for jurisdiction, procedures and powers of panels. Section 17C covers the various matters in respect of which a child may be brought before a panel. Section 17D is procedural and section 17E sets out the powers of a panel. Many matters which will come before a panel will undoubtedly involve damage to or loss of property. A panel cannot order restitution or compensation and consequently might feel constrained to refer such matters to a court. Where damage or loss is admitted and the quantum of such damage or loss is agreed, and the matter is one which could otherwise be adequately dealt with by a panel, an agreement to pay compensation or to make restitution might properly be included in the "undertaking" referred to in paragraphs (b) and (c) of sub-section (1). Usually the person who makes the allegation to the panel will have prepared a social background report for the information of the panel, but we have provided in paragraph (e) of s.17E power to adjourn the proceedings where it is considered desirable. This might be necessary in order to obtain a more comprehensive background report, or to call in some other person (with the consent of the child and his parent) to assist the panel. In the case of a migrant family the services of an interpreter may be necessary. In the case of an aborigine, assistance and advice could be provided by a recognised aborignal leader or community worker. Where truancy is a factor in the allegations before the panel, a teacher might be able to provide significant information or advice. An effective panel will recognise that different families and ethnic groups have different cultural, social, economic and family behaviour and attitudes and should be able to call for specialised assistance in appropriate cases. Section 17F details the circumstances in which the panel shall refer matters to a Children's Court and section 17G provides for the furnishing of reports.

We consider that, for the proper functioning of a panel and to remove any impression that a panel is just another court, it should not sit in any place commonly used as a court house or office of police. Section 17H makes this provision. No difficulty as to accommodation should arise in Brisbane or any provincial city, but some initial problems may arise in smaller country towns.

Children who have been arrested under this or any other Act must be taken before the court. We consider that the discretion as to whether a child should be brought before a court or a panel should not rest entirely in police officers or officers of the Department. Section 17I therefore provides that a court may refer any matter

in respect of which a child has been arrested to a panel to be dealt with. Section 17J is procedural in respect of matters referred by a panel to the court. Section 17K protects a child dealt with by a panel from any proceeding in a court in respect of the same matter.

CHILDREN'S COURT

5. Repeal of and new s.20. We recommend that Children's Courts be constituted only by a Magistrate of Children's Courts appointed under section 19 sitting alone. In the absence of such Magistrate any justice would have power of adjournment or remand. The new section 20 provides accordingly.

6. Repeal of s.23 and s.24 and substitution for s.23. We propose that sections 23 and 24 of the Principal Act be replaced by a new section 23. This section will relate to all offences and to the examination of witnesses in relation to indictable offences which cannot be dealt with summarily. The words "may be summoned to appear" are inserted to meet the case where a matter is referred by a Juvenile Aid Panel to a court; section 17J(2) requires that a complaint be made.

7. Renumbering of s.24A. Section 24A can be renumbered without alteration as section 24.

8. Amendment of s.25. Section 25, requires only minor consequential amendments which do not require any explanation.

9. Amendment of s.29. For the reasons set out earlier in this paper under the heading "Jurisdiction of Children's Courts" we recommend that a Children's Court constituted as proposed by a specially appointed Magistrate shall have jurisdiction to hear and determine in a summary manner charges of any indictable offence other than those upon which the accused, were he not a child, would be liable to imprisonment with hard labour for life. The new sub-sections replace part of section 29 of the Principal Act.

10. New s.29B. The completely new section 29B is designed to ensure that a child who is not legally represented fully understands the proceedings and is not confused or misled by use of legal phrases or words.

Part IV - Institutions - becomes Part V. This Part was discussed at length in Chapter 9 of the report of the Commission of Inquiry. The establishment of the various classes of Institutions is a matter of Government policy and we make no recommendation as to amendment of the Principal Act. We do consider however that the establishment of additional Assessment Centres and Attendance Centres would be advantageous to courts and to panels: they would

doubtless order or require attendance at appropriate Attendance Centres in disposing of many matters which come before them.

11. Amendment of s. 46. Part VI - Children in Need of Care and Protection - becomes Part VII. Section 46 of the Principal Act sets out the numerous circumstances in which a child shall be deemed to be in need of care and protection. The Commission of Inquiry considered that the section did not afford protection to a child whose development is being neglected or prevented and recommended that a clause be added containing a similar provision to that found in the corresponding legislation in England and in New Zealand. The new paragraph (p) is added to section 46 (1).

12. Amendment of s. 49. Section 49 of the Principal Act provides for applications to the Court for a care and protection order and for the taking into custody of the child concerned. Consequent upon the establishment of Juvenile Aid Panels with power to deal with allegations that a child is in need of care and protection it is necessary to add a proviso to sub-section (1) to meet the procedure in cases where the child has not been taken into custody.

13. Amendment of s. 61. A similar proviso will necessarily be added to section 61(1) of the Principal Act in Part VII - Children in Need of Care and Control - which becomes Part VIII of the Bill.

The orders which a Court might make are set out in sub-section (4). Sometimes an application follows an incident whereby damage is caused to property and the child has not been charged with an offence in relation to such incident. At present in these circumstances the court has no power to order payment of compensation or restitution. Paragraph (e) is added to sub-section (4) to enable such order to be made.

14. Amendment of s. 62. Section 62 deals with orders on children guilty of offences. Paragraph (a) of sub-section (1) allows the court to order such investigations and medical examinations to be made of and in relation to the child as the court thinks necessary or desirable, and for this purpose (paragraph (b)) may remand the child until all such investigations are completed. Reasonable background information is always immediately available to the court, which may then exercise its discretion to call for comprehensive reports and assessments. To require such reports in all cases, or even less than half the cases, would be beyond the capability of Departmental resources. The Challinger Report sets out "Holding back all cases for presentence material seems unnecessary for the once-only offender whose court appearance is salutary enough to cause him to keep out of trouble in the future. Additionally, at least at present, the strain on the pre-sentence reporting facilities would be too great.

Using such resources for those cases where a "treatment" disposition is thought likely seems a sensible move on the Magistrate's part." We believe that an experienced Magistrate would call for such reports if contemplating an order which would have the effect of removing a child from his home environment, but to dispel any doubt we have inserted a proviso that a court shall not exercise any power conferred by paragraphs (g), (h), (i) or (j) until it has obtained appropriate reports. Paragraph (g) allows an order for care and control and paragraph (h) an order for supervision, whilst under paragraph (k) the court may :-

(i) admonish and discharge the child; or
(ii) order that the Director exercise supervision over and in relation to the child for a period not exceeding two years; or
(iii) order that the child be committed to the care and control of the Director for a period not exceeding two years.

This apparent duplication in respect of orders that may be made has resulted in considerable confusion over the years as to which paragraph has been availed of in the making of some orders. The use of paragraphs (g) or (h) can only follow a conviction whereas under paragraph (k) there can be no conviction. It may be clear at the time that the order is made under a particular paragraph, but in later years there may be uncertainty as in the case of R. v. Mauer (1970 - unreported) in relation to the prohibition in s. 139 of mention either in evidence or in a statement of antecedents of any offence dealt with under the provisions of paragraph (k).

It appears that any uncertainty can be overcome by omitting sub-paragraphs (ii) and (iii) of paragraph (k), and by providing that the court may exercise a power conferred by paragraph (g) or paragraph (h) without formally convicting the defendant.

We recommend that s. 62 be amended as shown in the Bill.

15. Amendment of s. 63. Section 66 of the Principal Act makes provision for discharge from care and control and from supervision. It applies to all such orders made by the court under sections 61 and 62, and also to a child ordered to be detained under section 63 after conviction for a serious offence who by sub-section (2) is deemed to have been ordered by the court to be committed to the care and control of the Director. Where the care and control or the supervision orders were made otherwise than upon the conviction of the child concerned for an offence, the Minister may order the discharge, but in those cases where the order was made upon a conviction for an offence

the power to order discharge vests in the Governor in Council.

The Commission of Inquiry at page 17 of its report considered section 66 and recommended that, in respect of offenders convicted of offences under the Criminal Code as set out in section 63 and ordered to be detained during Her Majesty's pleasure, there should be established a Board similar in composition to the Parole Board to advise the Governor in Council. Except in the case of such offenders, and of children dealt with by an order pursuant to paragraphs (i) or (j) of sub-section (1) of section 62, the Director is not required to retain physical custody of the child concerned throughout the currency of the care and control order. The Director becomes the legal guardian of each child committed to his care and control and his duties are set out in section 65. In the performance of his duties it may be assumed that he will take action to secure the release from detention, and thereby also the discharge from care and control, of a child in care as soon as he considers it in the best interests of the child to do so. The Commission of Inquiry referred to provision in the Victorian Social Welfare Act for a Youth Parole Board, the functions of which are quite distinct from those they suggest for a Board to be established under section 66. No Australian State has legislated for such a Board, although Victoria has provided in Section 47 of the Community Welfare Act 1972 that the Director General shall establish within his Department such Review Boards as may be necessary to review the progress of children in care each year whilst under his control.

We are not satisfied that at present there is the need for a Board in Queensland as recommended by the Commission. However it appears that the only way a person may be released from detention ordered under section 63 is by the Governor in Council formally ordering under section 66 that he be discharged from the care and control of the Director. Instances may occur where he is satisfied that a youthful offender should be released from detention, but that it is desirable that the offender remain in the care and control of the Director for a further period, not merely under Supervision as provided by section 66 (2) (a). We recognise the desirability of the widest possible range of powers consistent with the welfare of children and recommend that provision for this contingency be made by adding a second paragraph to sub-section (2) of section 63.

A new section 67 was inserted by the 1971 Amendment Act, and paragraph (b) of sub-section (1) sets out certain matters and things which a court making a supervision order under section 62 may specify as the objects of the order. A magistrate of many years experience in children's courts has suggested that it is desirable that the court making a supervision order should be informed at intervals by reports as to the progress and conduct of the child

concerned.

We have given consideration to the suggestion and have concluded that such proposal is not desirable for two reasons: -

(1) supervision is purely an administrative function and is properly the sole responsibility of the Director, or as the case may be the Chief Probation Officer, and

(2) section 63(2) provides that the Director shall bring a person who is under supervision before a Children's Court if he is not satisfied with his conduct or living conditions.

16. Amendment of s. 87. The definition of "Court" in section 87 requires amendment by deleting the words "or a Stipendiary Magistrate or an Acting Stipendiary Magistrate".

17. Amendment of s. 94. The Amendment Act of 1971 added a new section numbered 93A. The second paragraph of sub-section (1) of section 94 contains the words "to the proviso to sub-section (4) of the last preceding section". This reference should be amended to read "to the proviso to sub-section (4) of section 93".

18. Amendment of s. 138. Section 138 prohibits the making of a report of any proceeding or any part thereof before any court, or before a justice taking an examination of witnesses in relation to an indictable offence, in which a child is concerned, whether as the person against or in respect of whom the proceeding is taken or as a witness therein or as a person in respect of whom an offence is alleged to have been committed, save on the order of the court, or justice unless -

(i) the report is one made for the Department, or the Department of Justice, or the Police Department; or

(ii) the proceeding is one in which the child is concerned as a witness only.

The object is the protection of children, and any report permitted by order of a court or under the provision of sub-paragraph (ii) cannot contain any particular likely to lead to the identification of the child unless the court expressly so permits. The section applies to all courts, and is not limited to children's court matters.

All Australian States have provided in child welfare legislation to preserve anonymity of children and prohibit publication of reports of proceedings in the Children's or Juvenile, Court and

in the Supreme Court on appeal or committal from the Children's Court, except as follows:-

In Victoria, section 48 of the Children's Court Act allows publication of a report of proceedings but prohibits any reference to locality or any particulars likely to lead to the identification of the particular Children's Court or the name, address or school or any particulars calculated to lead to the identification of any child or other person concerned in those proceedings. In South Australia by section 76 of the Juvenile Courts Act unless otherwise ordered by the Court, the result of any proceedings in a Juvenile Court or in the Supreme Court on appeal or on committal from a Juvenile Court may be published or reported provided that it does not reveal the name, address or school or any particulars likely to lead to the identification of any child concerned in the proceedings. Section 23 of the Western Australia Child Welfare Act prohibits publication of any report of proceedings without the express authority of the court, but sub-section (3) provides that where a child since attaining the age of 16 years has been convicted of any of a wide list of offences set out therein and is subsequently convicted of the same or another of such offences the prohibition shall not, in relation to such subsequent conviction, apply to the publication of the name, age and address of the child, nor the offence of which the child is convicted. (In Western Australia a "child" is a person under the age of 18 years.)

Section 71(A)(1) of the Justices Acts provides for exclusion of the public from the court while a child is giving evidence in relation to a charge of an offence of a sexual nature alleged to have been committed on a child under the age of 17 years and prohibits publication of the name or address of a child who gave evidence or of the name or address of a parent or guardian of such child. Sub-section (2) provides that the justices or the judge may by order prohibit publication of any part of the proceedings or of the name of children who gave evidence and of a female complainant in relation to a charge of an offence of a sexual nature.

It might be considered that the Justices Acts sufficiently protect the identity of children in relation to charges brought against adults, and that section 138 of the Children's Services Act be amended to apply only to proceedings in Children's Courts and in Superior courts on committal or on appeal from a Children's Court, which are the classes of proceedings covered by section 76 of the South Australian Act. However the Legislature appears to have indicated by the 1971 amendment that it considers the Children's Services Act should provide for or restrict publication of reports of proceedings concerning children in all courts. We have therefore made such provision. We recommend that sub-sections (1) and (2) of

s. 138 be repealed and be replaced by three sub-sections. The first will apply to proceedings in Children's Courts and we propose a prohibition on publication unless permitted by order of the court, as we do not see that publication of "result" would serve to inform the public any more adequately than the statistical information included in the Director's Annual Report. The new sub-section (2) applies to proceedings concerning children in other courts, including proceedings on indictment or on appeal. This will allow publication so long as no particulars are published which could lead to the identification of any child concerned unless permitted by order of the court. Sub-section (3) simply provides that any publication in contravention of sub-section (1) and (2) shall be an offence. Section 71A of the Justices Act may require amendment.

At pages 12 and 13 of its report, the Commission of Inquiry discussed at some length the provisions of section 139 and made recommendations for a new section to be inserted in lieu thereof. This recommendation has as its first object the protection of a child from any future disability that might arise as a consequence of a conviction in a Children's Court, such as a specific provision in a statute or regulation which debars convicted people from obtaining particular employment or from entering into particular professions or institutions. The report further stipulates "What is needed is that there should be a clear provision to establish that if a person is dealt with only once in the Children's Court then this should be the end of the matter. Certainly this conviction or order should not be held against him for the rest of his life and should not be any bar to his choice of career."

We agree that a child should not be disadvantaged for life because of just one lapse during childhood or adolescence. We consider that adoption of the proposal for Juvenile Aid Panels should practically resolve this situation. It is envisaged that all first offenders will be brought before a Panel and will generally not be referred to the court unless the offence alleged is of a very serious nature. In many instances, the Panel might also properly deal with second and even third offenders.

The second paragraph of the recommendation of the Commission of Inquiry relates to the furnishing of reports to the Children's Court in any subsequent proceedings in the court involving a child in respect of whom a previous order was made. Provision is made in the new Part III for the furnishing of reports to the Panels. Sections 49, 61 and 62 provide that the court may order such investigations and medical examinations of a child as it considers necessary and may remand the child for this purpose. Such reports would be additional to the oral report as to social background and antecedents which is always made to the court after a plea or a

determination. We consider that no further legislative provision is necessary.

The third paragraph of the suggested amendment relates to convictions in the Magistrates Court, the District Court or the Supreme Court for an indictable offence of a person under the age of 30 years who has previously been dealt with in the Children's Court for an indictable offence. The Director or an officer of his Department is permitted under section 144 to furnish information in the possession of the Department in relation to such person to a lawfully constituted court, but section 139 prohibits the disclosure in a court other than a Children's Court of any offence for which a person has been dealt with whilst a child under the provisions of paragraph (k) of sub-section (1) of section 62, and such person shall not be asked and if asked shall not be required to answer any question relating to such last-mentioned offence. The effect of the amendment proposed by the Commission would be to remove this prohibition and the protection afforded the person concerned. We appreciate the desirability of courts dealing with adult offenders having complete background information, but consider that the prohibition of reference contained in section 139 should be retained. In theory a requirement that comprehensive reports be furnished to the court has much to commend it but in practice such a statutory provision would over-strain the Department's reporting facilities. Where a proceeding is upon indictment no difficulty is likely because of the small number of such cases and of the time which necessarily elapses between committal and trial, but when an offender is dealt with summarily (particularly on a plea of guilty) a remand would be necessary to obtain the projected reports. We consider that the Legislature can confidently leave it to the discretion of the courts to call for reports and/or medical examinations in appropriate cases.

19. Amendment of s. 144. Section 144(1) prohibits the communication by the Director or his officers of any information as to a child which comes to his knowledge in his official capacity to any person except -

(a) for the purpose of carrying this Act into effect; or
(b) to a lawfully constituted court or tribunal.

It is submitted that this provision has the effect of prohibiting the Director from giving to counsel representing a child charged with a serious offence information as to any assessments made of the child whilst under supervision or in care and control.

The purpose of the Act is to promote, safeguard and protect the well-being of the children and youth of the State. It might well be argued it would be "for the purpose of carrying this Act

into effect" if the Director were to make available to counsel defending a child any assessments or other reports concerning such child which are in his possession.

The Director has a duty to promote and protect the welfare of any child and is the legal guardian of a child in care. Section 142 gives him and officers of his Department the right to appear and to be heard when a child is being tried or sentenced in respect of an offence.

It appears that the supplying of assessments or reports to counsel representing a child charged with an offence, and considered by counsel to be necessary for his proper defence, would not transgress the clear purpose of the Act. However if there is doubt as to the legal right or duty of the Director to make such information available (and we understand that the Director has been so advised) the Act should be amended and we recommend that a new paragraph (c) be added to sub-section (1).

A Bill to amend the Children's Services Act 1965 - 1974 in certain particulars.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

1. Short title and citation. (1) This Act may be cited as the Children's Services Act Amendment Act

(2) The Children's Services Act 1965 - 1974 is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Children's Services Act 1965 -

2. Amendments to s.2. Section 2 of the Principal Act is amended

(a) by inserting after the words and symbols "Part II - Administration:" the words and symbols "Part III - Juvenile Aid Panels;" and

(b) by re-numbering the remaining Part III to Part XIII as Part IV to Part XIV consecutively.

3. Amendment to s.8. Section 8 of the Principal Act is amended by inserting after the definition "Justice" the definition:-

"Juvenile Aid Panel: - A panel constituted as provided in part III of this Act.

4. New Part III - Juvenile Aid Panels. The Principal Act is amended -

(a) by inserting after the end of s.17 the heading and head note -

PART III

Juvenile Aid Panels

(b) by inserting the following new sections -

"17A. (1) There shall be Juvenile Aid Panels which shall carry out the functions given to them in this Part.

(2) The Attorney-General shall prepare a list containing the names and addresses of such persons who are in his opinion qualified for membership of juvenile aid panels constituted under this Act, as he thinks expedient.

(3) The list shall comprise the names and addresses of -

(a) officers of the Police Department nominated by the Commissioner of Police;

(b) officers of the Department nominated by the Director; and

(c) such other persons who, in the opinion of the Attorney-General, have special qualifications in matters affecting the welfare of children,

and approved for the purpose of inclusion in the list by the Attorney-General.

(4) The Attorney-General may from time to time revise the list prepared under this section.

17B. (1) Subject to sub-section (2) a juvenile aid panel shall be constituted by two persons included in the list prepared by the Attorney-General.

(2) Each panel must be constituted of -

(a) a person as set out in paragraph (c) of section 17A(3), or a person nominated for inclusion in the list by the Commissioner of Police; and

(b) a person nominated for inclusion in the list by the Director.

17C. This Part shall apply in respect of -

(a) a child who is alleged to be in need of care and protection or of care and control; or

(b) a child who is alleged to have committed any offence other than an indictable offence for which he would be liable, were he not a child, to imprisonment with hard labour for life or any of the offences set out in paragraphs (a), (b) and (c) of section 63(1).

17D. (1) Subject to section 17J of this Act, where a child to whom this Part applies is alleged to have committed an offence and the child has not been arrested, no complaint shall be laid against the child but the allegation and a report of the circumstances of the alleged offence shall be referred to a juvenile aid panel to be dealt with by the panel.

(2) Subject to section 17J of this Act, where a child to whom this Part applies is alleged to be in need of care and protection or of care and control, and the child has not been arrested, no complaint shall be laid against the child but the allegation and a report of the circumstances upon which it is based shall be referred to a juvenile aid panel to be dealt with by the panel.

(3) The provisions of sub-section (1) and sub-section (2) shall not apply where the child is subject to an order of a children's court which, or the effect of which, is not fully satisfied or completed.

17E. (1) A juvenile aid panel shall have the following powers in dealing with a child under this Part -

(a) the panel may warn or counsel the child and his parents or guardians;

(b) the panel may request the child to undertake, in writing, to pay compensation or to make restitution in relation to any damage to property which may have been admitted by the child and/ or to comply with such directions as may be given by the panel as to any training or rehabilitative programme to be undergone by the child;

(c) the panel may request a parent or guardian of the child to undertake, in writing, to pay compensation or to make restitution in relation to any damage to property which may have been admitted by the child and /or to comply with such directions as may be given by the panel to assist the child in any training or rehabilitative programme; or

(d) the panel may refer the matter to a Children's Court if the child, or a parent or guardian of the child, refuses to make an undertaking as requested by the panel or if, in the opinion of the panel, it is otherwise expedient to do so for the purpose of the rehabilitation of the child.

(2) The panel may adjourn the matter before it where it considers that additional social background or other relevant information concerning the child is required or that the presence before the panel of some other significant person, with the consent of the child and his parent or guardian, would be in the best interests of the child.

(3) Where an undertaking is made by a child or the parent or guardian of a child under sub-section (1) and the undertaking is not observed at any time within six months after the undertaking is given, the panel may refer the matter to a Children's Court for hearing and determination.

17F. (1) A Juvenile Aid Panel shall refer a matter to a children's court if -

(a) a child does not appear before the panel in accordance with the request of the panel;

(b) the child or a parent or guardian of the child requests at any stage of the proceedings that the matter be heard and determined by a Children's Court; or

(c) the panel is of the opinion that the matter should be referred to a Children's Court because of the gravity of the alleged offence or because it is expedient in the interests of the child or of the community that the matter should be so referred.

(2) A parent or guardian of a child in respect of whom proceedings are brought before a Juvenile Aid Panel shall be notified in writing to attend with the child at the hearing of the proceedings and, unless the panel is of the opinion that there is good reason for so doing, it shall not deal with a matter unless the parent or guardian has appeared, but shall refer the matter to a Children's Court for hearing and determination.

(3) The Juvenile Aid Panel must inform the child and, where present, the parent or guardian of the child, that he is entitled to request at any stage of the proceedings that the matter be heard and determined by a Children's Court.

17G. (1) The investigating police officer or an officer of the Department of Children's Services shall, in the case of any matter referred to a Juvenile Aid Panel under this Part cause to be prepared for the information and guidance of the Juvenile Aid Panel a report setting out so far as may be reasonably ascertainable and relevant to the matter under consideration details of any alleged offence and of the personal circumstances and social background of the child to whom the allegation relates.

(2) A panel may request the Director to obtain any further information or reports that may be necessary or desirable for the purpose of dealing with a child under this Part and the Director shall, so far as is reasonable practicable, comply with such a request.

17H. A Juvenile Aid Panel shall not sit for the purpose of exercising any of its functions under this

Act in any place commonly used as a courthouse or office of police.

17I. (1) Where a child to whom this Part would otherwise apply is arrested and subsequently appears before a Children's Court, the court may -

(a) proceed to hear and determine the complaint; or

(b) adjourn the hearing and, if necessary, remand the child on bail or subject to the provisions of section 26, in custody to be dealt with by a Juvenile Aid Panel.

(2) Where a hearing has been adjourned to enable a child to be dealt with by a Juvenile Aid Panel under sub-section (1), the presence of the child before the court shall not be required while the court hears any further application or makes any order for a further adjournment or remand of the child, unless the court otherwise orders.

(3) Where a hearing has been adjourned to enable a child to be dealt with by a Juvenile Aid Panel under sub-section (1), the court may, upon receipt of a report from the Juvenile Aid Panel, dismiss the complaint or allow it to be withdrawn, or if the panel refers the matter back to the court in pursuance of the provisions of this Part, may proceed to hear and determine the complaint in accordance with the provisions of this Act.

17J. (1) Where a matter is referred by a Juvenile Aid Panel to a Children's Court for hearing and determination, the panel shall notify the court in writing of the reason for so referring the matter and shall also cause written notification to be given to the child and a parent or guardian of the child of the decision of the panel so to refer the matter.

(2) Upon a matter being so referred to a Children's Court a complaint in respect of the allegation shall be laid against the child by a police officer or, as the case may be, by an officer of the Department of Children's Services.

(3) Subject to sub-section (4) where a matter has been referred to a Children's Court for hearing and determination, evidence of the proceedings before a Juvenile Aid Panel in respect of the alleged offence shall not be admissible in the Children's Court.

(4) A report of proceedings before a Juvenile Aid Panel in respect of an alleged offence shall be admissible in a Children's Court in proceedings in respect of a subsequent offence found proved against the child.

17K. Where a child is dealt with by a Juvenile Aid Panel under this Act, no proceedings shall be brought before any court in respect of the offence alleged to have been committed by the child and upon which the child was dealt with by the panel, unless the matter is referred to a Children's Court by the panel pursuant to the provisions of this Part."

5. Repeal of and new s.20. Section 20 of the Principal Act is repealed and a new section inserted:-

"20. Constitution of Children's Courts. A Children's Court shall be constituted by a Magistrate of Children's Courts sitting alone. If a Magistrate of Children's Courts be not present any justice shall have power of adjournment or remand."

6. Repeal of s.23 and s.24 and substitution for s.23. Sections 23 and 24 of the Principal Act are repealed and a new section 23 inserted:-

"23. A child charged with any offence for which he may be dealt with in a summary manner or with a breach of duty shall be brought or, as the case may require, may be summoned to appear before a Children's Court.

Subject to this Act, the provisions of the Justices Act 1886 - 1975 applicable to a justice sitting to take an examination of witnesses in relation to an indictable offence shall, with all necessary adaptations, apply to a Magistrate of Children's Courts sitting in respect of any indictable offence not dealt with summarily."

7. Renumbering of s.24A. Section 24A of the Principal Act is renumbered section 24.

8. Amendment of s.25. Section 25 is amended by -

(a) Repealing sub-subsection (1) and inserting in its stead the following sub-section:-

"(1) A Children's Court shall fix special times for the hearing of charges of any offences or breaches of duty against children and for the hearing of any other proceeding before such court which concerns

a child and for taking examinations of witnesses in relation to indictable offences not dealt with summarily charged against children."

(b) in sub-section (2) deleting the words "or, as the case may require, justice".

9. Amendment of s.29. Section 29 of the Principal Act is amended by -

(a) repealing sub-sections (1),(2),(3),(4),(5) and (6) and inserting the following sub-sections:-

"(1) A children's Court shall have jurisdiction to try or sentence or otherwise deal with in a summary manner, in accordance with this Act, a person who -

(a) is a child charged with an indictable offence other than such an offence for which he would be liable, were he not a child, to imprisonment with hard labour for life;

(b) was a child when there was commenced against him, whether before that Children's Court or before any other court or tribunal, a proceeding whereby or as a result whereof he stands before that Children's Court charged with an indictable offence other than such an offence for which he would be liable, were he not a child, to imprisonment with hard labour for life.

Subject to this Act, a Magistrates Court shall not have jurisdiction in respect of a child charged with an offence or breach of duty.

(2) A Children's Court shall refrain from exercising its jurisdiction under this section -

(a) unless it is satisfied that the circumstances of the case and of the defendant are such that the case may be adequately dealt with by a Children's Court; or

(b) if it considers that for any reason it is desirable in the interest of justice that the child should be committed to be tried or to be sentenced in the Supreme Court or a Distric Court.

(3) Before exercising its discretion under sub-section (2) 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 to the Supreme Court or a District Court and give them an opportunity of making representations for the consideration of the court; 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."

(4) When a Children's Court refrains from exercising its jurisdiction under this section the magistrate who constitutes such court shall proceed to take an examination of witnesses in relation to the offence charged and, if satisfied that the evidence is sufficient to put the defendant upon his trial for an indictable offence shall commit the defendant to be tried or, as the case may require, for sentence before a court of competent jurisdiction and may exercise in relation to such defendant all such powers as such magistrate would possess by virtue of the Justices Act, 1886 - 1975 or of this Act were he a justice taking an examination of witnesses in relation to an indictable offence charged against such defendant and the provisions of those Acts shall apply in relation to such committal and to proceedings taken consequent thereon as if such magistrate were a justice taking such an examination.

(b) by renumbering sub-section (7) as sub-section (5) and repealing paragraph (b), and by renumbering paragraph (c) as paragraph (b).

10. New s.29B. The Principal Act is amended by inserting after s.29A the following section:-

"29B. Where a child in respect of whom proceedings have been brought before a Children's 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, 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."

11. Amendment of s.46. Section 46 of the Principal Act is amended by adding the following paragraph to sub-section (1):-

"(p) his proper development is being avoidably prevented or neglected."

12. Amendment of s.49. Section 49 of the Principal Act is amended by, in sub-section (1), adding the following paragraph:-

" Provided that where the child has not been arrested or taken into custody by or on behalf of the Director, no application shall be made to the Court but the allegation and a report of the circumstances upon which it is based shall be referred to a Juvenile Aid Panel to be dealt with by the panel."

13. Amendment of s.61. Section 61 of the Principal Act is amended by -

(a) in sub-section (1), adding the following paragraph:-

Provided that where the child has not been arrested or taken into custody by or on behalf of the Director, no application shall be made to the Court but the allegation and a report of the circumstances upon which it is based shall be referred to a Juvenile Aid Panel to be dealt with by the panel.

(b) in sub-section (4), adding the following paragraph:-

(e) In any case where the court is satisfied that the child is before the court as a result of an incident whereby damage to property was caused by the child and the child has not been charged with an offence in relation to such damage, may order the parent or guardian to pay compensation or make restitution in respect of the damage or loss occasioned by the child.

An order for compensation or restitution shall not be made against a parent or guardian of the child unless such parent or guardian has been given an opportunity of being heard on that matter.

The provisions of sub-section 2(a) of section 62 shall apply in relation to recovery of the amount so ordered to be paid.

14. Amendment of s.62. Section 62 of the Principal Act is amended by -

(a) in subsection (1), omitting paragraph (k) and inserting in its stead:-

"(k) may admonish and discharge the child.";

(b) in subsection (1), omitting the first paragraph following paragraph (k) and inserting in its stead -

" A court may exercise any one or more of the powers conferred on it by paragraphs (a) to (k) of this subsection as it thinks appropriate to the circumstances of the case. Provided that where the court has not already made an order under paragraph (a) of this sub-section it shall not exercise a power conferred on it by paragraph (g), (h), (i) or (j) of this sub-section until it has requested and obtained a comprehensive report as to the antecedents, habits, conduct, home environment and all other matters relevant to the child.";

(c) in subsection (1), in the next following paragraph omitting the words "by paragraph (a),(b),(c),(d), or (f) of this sub-section" and inserting in their stead the words "by paragraph (a),(b),(c),(d),(f),(g) or (h) of this sub-section.";

(d) in subsection (3), omitting the words "or paragraph (k)"; and

(e) in subsection (4), omitting the words "or paragraph (k)".

15. Amendment of s.63. Section 63 of the Principal Act is amended by, in sub-section (2), adding the following paragraph -

" Notwithstanding the provisions of section 66, the Governor in Council may at any time order the release of a child so detained without discharging him from the care and control of the Director."

16. Amendment of s.87. Section 87 of the Principal Act is amended by omitting from the definition "Court" the words "or a Stipendiary Magistrate or an Acting Stipendiary Magistrate".

17. Amendment of s.94. Section 94 is amended by omitting the words "to the proviso to sub-section (4) of the last preceding section" in the proviso to sub-section (1) and inserting in lieu the words "to the proviso to sub-section (4) of section 93".

18. Amendment of s.138. Section 138 of the Principal Act is amended by -

(a) omitting sub-sections (1) and (2) and inserting in

their stead the following sub-sections:-

(1) Report of proceedings in Children's Courts prohibited. When in a proceeding before a Children's Court, or before a justice taking an examination of witnesses in relation to an indictable offence, a child is concerned, whether as the person against or in respect of whom the proceeding is taken or as a witness therein or as a person in respect of whom an offence is alleged to have been committed -

(a) a report shall not be made of the proceeding or any part thereof save on the order of the court or, as the case may be, the justice unless the report is one made for the Department, or the Department of Justice, or the Police Department;

(b) a report of the proceeding or any part thereof made on the order of the court or, as the case may be, the justice shall not reveal the name, address or school of the child or include any particular likely to lead to the identification of the child unless the court or, as the case may be, the justice, expressly so permits.

(2) Restriction on report of proceeding concerning children in other Courts. Save on the order of the court no person shall publish or cause to be published in any newspaper or broadcast by means of wireless, or television a report of any proceeding in any court other than a Children's Court, containing the name, address or school or any particulars calculated to lead to the identification of any child concerned in that proceeding either as being the person against or in respect of whom the proceeding is taken or as a witness therein or as a person in respect of whom an offence is alleged to have been committed, nor shall any person publish or cause to be published in a newspaper or by television or otherwise any picture as being or including a picture of a child concerned in such proceeding.

(3) A person who makes a report or publishes any matter to which sub-sections (1) and (2) apply save under the authority provided for by those sub-sections commmits an offence against this Act."

(b) renumbering sub-section (3) as sub-section (4).

19. Amendment of s.144. Section 144 of the Principal Act is amended by, in sub-section (1), adding a new paragraph as follows:-

"or (c) to the counsel or solicitor representing a child charged with an indictable offence, so far as it relates to or concerns such child."