

**CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT
ACT 1987 No. 270**

NEW SOUTH WALES



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CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT ACT 1987
No. 270

NEW SOUTH WALES



Act No. 270, 1987

An Act to amend the Children (Criminal Proceedings) Act 1987 with respect to the jurisdiction of the Children's Court to hear proceedings for certain offences, the remanding and committal of certain children and other persons to prison and certain other matters. [Assented to 16 December 1987]

Children (Criminal Proceedings) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Children (Criminal Proceedings) Amendment Act 1987.

Amendment of Act No. 55, 1987

2. The Children (Criminal Proceedings) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

(1) Section 3 (**Definitions**)—

(a) Section 3 (1)—

After the definition of “adult”, insert:

“attendance notice” has the same meaning as it has in the Justices Act 1902;

(b) Section 3 (1), definition of “serious indictable offence”—

(a) From paragraph (c), omit “or”.

(b) At the end of paragraph (d), insert:

; or

(e) an indictable offence prescribed by the regulations as a serious indictable offence for the purposes of this Act;

(c) Section 3 (2)—

Omit the subsection.

(2) Section 8—

Omit the section, insert instead:

Commencement of proceedings by summons etc.

8. (1) Criminal proceedings should not be commenced against a child otherwise than by way of summons or attendance notice.

(2) Subsection (1) does not apply—

(a) if the offence for which proceedings are being commenced consists of—

(i) a serious indictable offence;

(ii) an indictable offence under Division 2 of Part II of the Drug Misuse and Trafficking Act 1985; or

(iii) an offence (whether indictable or otherwise) prescribed by the regulations for the purposes of this paragraph;

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- (b) if, in the opinion of the person by whom the proceedings are commenced, there are reasonable grounds for believing that—
- (i) the child is unlikely to comply with a summons or attendance notice; or
 - (ii) the child is likely to commit further offences,
- if the proceedings were to be commenced by summons or attendance notice; or
- (c) if, in the opinion of the person by whom the proceedings are commenced—
- (i) the violent behaviour of the child; or
 - (ii) the violent nature of the offence,
- indicates that the child should not be allowed to remain at liberty.

(3) If a child fails to comply with an attendance notice, the child's attendance at the proceedings to which the notice relates should, unless there are exceptional circumstances, be enforced by way of summons rather than by way of warrant.

(3) Section 9 (**Expedition where child in custody**)—

(a) Section 9—

Omit "citation", insert instead "attendance notice".

(b) Section 9—

Omit "but, in any case, no later than the next day, or, if the next day is a Saturday, Sunday or public holiday, no later than the next day that is not a Saturday, Sunday or public holiday".

(c) Section 9 (2)—

At the end of section 9, insert:

(2) Without limiting the generality of subsection (1), a child who is not released on bail under the Bail Act 1978 shall, for the purpose of making a further determination of bail, be brought before an authorised justice—

(a) no later than the next day; or

(b) if the next day is a Saturday, Sunday or public holiday—
no later than the next day that is not a Saturday, Sunday or public holiday,

if, within that time, the child has not been brought before the Children's Court.

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(4) Section 9A—

After section 9, insert:

Certain children may be remanded in prison

9A. (1) This section applies to a child who is of or above the age of 16 years, being—

- (a) a child who is charged with an indictable offence; or
- (b) a detainee who is charged with a prescribed offence.

(2) In any criminal proceedings against a child to whom this section applies, a court may—

- (a) on the application of the Minister administering the Children (Detention Centres) Act 1987;
- (b) if the child is not released on bail under the Bail Act 1978; and
- (c) if the court is of the opinion that the child is not a suitable person for detention in a detention centre,

remand the child to a prison pending the commencement of the hearing of the proceedings or during any adjournment of any such hearing.

(3) An application referred to in subsection (2) (a) may be made only if the Minister administering the Prisons Act 1952 consents to the making of the application.

(4) In this section—

“detainee” has the same meaning as it has in the Children (Detention Centres) Act 1987;

“detention centre” has the same meaning as it has in the Children (Detention Centres) Act 1987;

“misbehaviour” has the same meaning as it has in the Children (Detention Centres) Act 1987;

“prescribed offence” means—

- (a) the offence under section 33 (1) of the Children (Detention Centres) Act 1987 of escaping or attempting to escape from lawful custody; or
- (b) any other offence (other than misbehaviour) committed within a detention centre;

“prison” has the same meaning as it has in the Prisons Act 1952.

(5) Section 13 (**Admissibility of certain statements etc.**)—

Section 13 (3)—

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After section 13 (2), insert:

(3) Nothing in this section limits or affects the admissibility in evidence in any criminal proceedings against a child of any statement or information that the child is required to make or give by virtue of the provisions of any Act or law.

(6) Section 22 (**Adjournments**)—

Section 22—

Omit the section.

(7) Section 24 (**Compensation**)—

Section 24 (2)—

At the end of section 24, insert:

(2) In deciding whether or not—

(a) to order a child who is of or above the age of 16 years to pay compensation; or

(b) to require such a child to pay compensation under the conditions of any other order made by the court in respect of the child,

and in deciding the amount of compensation to require the child to pay pursuant to such an order or condition, a court shall have regard to the child's financial means.

(8) Section 30—

Omit the section, insert instead:

Adjournments

30. The powers of the Children's Court to adjourn proceedings, and to grant bail under the Bail Act 1978 pending the hearing of proceedings and during any adjournment of proceedings, may be exercised by an authorised justice.

(9) Section 33 (**Penalties**)—

(a) Section 33 (1) (g)—

Omit the paragraph, insert instead:

(g) it may, subject to the provisions of the Probation and Parole Act 1983, make an order committing the person for such period of time (not exceeding 2 years) as it thinks fit to the control of the Minister administering the Children (Detention Centres) Act 1987.

(b) Section 33 (4)—

After "contrary", insert ", but subject to section 33A".

(c) Section 33 (5)—

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SCHEDULE 1—AMENDMENTS—*continued*

After section 33 (4), insert:

(5) Nothing in this section limits or affects any power that the Children's Court may have apart from this section—

- (a) to impose any disqualification under the Motor Traffic Act 1909 on a person whom it has found guilty of an offence;
- (b) to order the forfeiture of any property that relates to the commission of an offence of which it has found a person guilty; or
- (c) to make an order for restitution of property under section 438 of the Crimes Act 1900.

(10) Sections 33A, 33B—

After section 33, insert:

Certain children etc. may be imprisoned

33A. (1) This section applies to a person who is of or above the age of 16 years, being a person who—

- (a) is subject to an order in force under section 33 (1) (g) in relation to an indictable offence; and
- (b) is subject to a further order in force under section 33 (1) (g) in relation to an offence (under section 33 (1) of the Children (Detention Centres) Act 1987) of escaping or attempting to escape from lawful custody committed by the person while the person was a detainee in relation to the offence referred to in paragraph (a).

(2) The Children's Court may—

- (a) on the application of the Minister administering the Children (Detention Centres) Act 1987; and
- (b) if it is of the opinion that the person is not a suitable person for detention in a detention centre,

order that a person to whom this section applies be committed to prison for the whole or any part of the period of time specified in the relevant order under section 33 (1) (g).

(3) An application referred to in subsection (2) (a) may be made only if the Minister administering the Prisons Act 1952 consents to the making of the application.

(4) On the making of an order under this section in relation to a person to whom this section applies, the relevant order under section 33 (1) (g) shall be deemed to have become a sentence of imprisonment for a term equivalent to the period of time specified, pursuant to subsection (2), in the order under this section.

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(5) An order under this section shall be reviewed, at least once a month, by the Minister administering the Prisons Act 1952.

(6) An application for the variation or revocation of an order under this section may be made to the Children's Court by or on behalf of—

- (a) the person to whom the order relates; or
- (b) the Minister administering the Prisons Act 1952.

(7) An application referred to in subsection (6) (b) may be made only if the Minister administering the Children (Detention Centres) Act 1987 consents to the making of the application.

(8) In any proceedings on an application under subsection (6), the person to whom the order relates is entitled—

- (a) to appear in the proceedings and be heard; and
- (b) to be represented by a barrister or solicitor or, by leave of the Children's Court, by an agent.

(9) In this section—

“detainee” has the same meaning as it has in the Children (Detention Centres) Act 1987;

“detention centre” has the same meaning as it has in the Children (Detention Centres) Act 1987;

“prison” has the same meaning as it has in the Prisons Act 1952.

Application of Part II of the Probation and Parole Act 1983

33B. Part II of the Probation and Parole Act 1983 applies to a person who is the subject of an order in force under section 33 (1) (g) in the same way, but subject to the modifications set out in Schedule 1, as it applies to a person sentenced to a term of imprisonment.

(11) **Section 34 (Restrictions on the imposition of control orders)—**

Section 34 (2)—

Omit the subsection.

(12) **Section 36 (Compensation under sec. 554 of the Crimes Act 1900)—**

At the end of section 36, insert:

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(2) In deciding whether or not to require a person to pay compensation under this section, the Children's Court shall have regard to the person's financial means.

(13) Section 37—

Omit the section, insert instead:

Term of control order

37. Subject to—

(a) section 15 of the Children (Care and Protection) Act 1987; and

(b) section 32 of the Children (Detention Centres) Act 1987, an order under section 33 (1) (g) ceases to have effect at the end of the period specified in the order.

(14) Section 38 (**Destruction of photographs, finger-prints etc.**)—

Section 38 (1), (2)—

After "any other" wherever occurring, insert "prescribed".

(15) Section 42 (**Appeals**)—

(a) Section 42 (3)—

Omit ", but does not include a reference to an order made under section 33 (1) (a)".

(b) Section 42 (4)—

After section 42 (3), insert:

(4) An appeal may be made in relation to a finding of guilt referred to in section 33 (1) even though the charge to which the finding relates has been dismissed by an order made under section 33 (1) (a).

(16) Schedule 1—

At the end of the Act, insert:

SCHEDULE 1—MODIFICATIONS OF THE PROBATION AND PAROLE ACT 1983

(Sec. 33B)

Modification of certain references

1. The provisions of Part II of the Probation and Parole Act 1983 shall be read as if—

(a) a reference to a conviction were a reference to a finding of guilt;

(b) a reference to a sentence of imprisonment were a reference to an order under section 33 (1) (g) of this Act;

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) a reference to a term of imprisonment were a reference to a period specified in an order under section 33 (1) (g) of this Act;
- (d) a reference to a prisoner were a reference to a person who is the subject of an order under section 33 (1) (g) of this Act;
- (e) a reference to a prison were a reference to a detention centre within the meaning of the Children (Detention Centres) Act 1987;
- (f) a reference to the governor of a prison were a reference to the superintendent of a detention centre within the meaning of the Children (Detention Centres) Act 1987; and
- (g) the reference in section 16 (4) (b) of that Act to 3 years were a reference to 2 years.

Omission of certain words

2. The provisions of Part II of the Probation and Parole Act 1983 shall be read as if—

- (a) the words “of more than 6 months and not more than 3 years” in section 5 (b) of that Act;
- (b) the words “of not more than 3 years” wherever occurring in section 6 (1) (b) and (c) of that Act;
- (c) the words “, if the term of imprisonment to which the person would have been sentenced, had the original term and subsequent term been imposed by a single sentence (giving effect to the requirements relating to the order in which the original term and subsequent term are to be served), would have been more than 6 months and not more than 3 years,” in section 6 (1) of that Act; and
- (d) the words “the date occurring 6 months before” in section 9 (4) of that Act,

were omitted from those provisions.