

**CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT  
ACT 1989 No. 75**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Children (Criminal Proceedings) Act 1987 No. 55
4. Amendment of Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987 No. 273

SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987

SCHEDULE 2—AMENDMENT OF MISCELLANEOUS ACTS (CHILDREN'S COURT AND CRIMINAL PROCEEDINGS) AMENDMENT ACT 1987

---

**CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT ACT 1989**  
**No. 75**

NEW SOUTH WALES



**Act No. 75, 1989**

An Act to amend the Children (Criminal Proceedings) Act 1987 in relation to the remitting of cases to other courts, the publication of names of children involved in criminal proceedings, the making of compensation orders, the imposing of penalties and other matters; and to amend the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987. [Assented to 2 June 1989]

*Children (Criminal Proceedings) Amendment 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Children (Criminal Proceedings) Amendment Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Children (Criminal Proceedings) Act 1987 No. 55**

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

**Amendment of Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987 No. 273**

4. The Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987 is amended as set out in Schedule 2.

---

**SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987**

(Sec. 3)

**(1) Section 3 (Definitions)—****(a) Section 3 (1)—**

After the definition of "Children's Court", insert:

"court" includes justice (whether or not the justice is a Children's Magistrate or a Magistrate);

**(b) Section 3 (1), definitions of "parent" and "person responsible"—**

Omit the definitions, insert instead:

"parent", in relation to a child, includes—

(a) a guardian of the child; and

(b) a person who has the lawful custody of the child,

but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child;

"person responsible", in relation to a child, means—

(a) a parent of the child; or

(b) a person who has the care of the child (whether or not the person has the custody of the child);

*Children (Criminal Proceedings) Amendment 1989*

---

SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

(2) Section 7—

Omit the section, insert instead:

**Jurisdiction of the Children's Court not to be exercised by Local Courts etc.**

7. Except as provided by this Act, neither a Local Court nor a justice or justices may hear and determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.

(3) Section 7A—

After section 7, insert:

**Courts may rely on apparent age of defendants**

7A. (1) For the purpose of enabling a court to determine whether or not it has jurisdiction to hear and determine criminal proceedings against a person in circumstances in which the court's jurisdiction depends on the person's age, the court may, if it is satisfied that no other evidence of the person's age is readily available, rely on the apparent age of the person.

(2) Nothing in this section limits the operation of Part 4.

(4) Section 11 (**Publication of names etc.**)—

(a) Section 11 (4) (b)—

Omit "14" wherever occurring, insert instead "16".

(b) Section 11 (4) (b) (i)—

Omit "Attorney General", insert instead "court concerned".

(c) After section 11 (4), insert:

(4A) The consent of the court referred to in subsection (4) (b) (i) shall not be given except with the concurrence of the child or (if the child is incapable of giving concurrence) where the court is of the opinion that the public interest so requires.

(5) Section 12—

Omit the section, insert instead:

**Proceedings to be explained to children**

12. (1) If criminal proceedings are brought against a child, the following matters shall be explained to the child:

(a) the nature of any allegations made against the child; and

(b) the facts that must be established before the child can be found guilty of the offence with which the child is charged.

*Children (Criminal Proceedings) Amendment 1989*

---

SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

- (2) Until those matters have been explained to the child, the court before which the proceedings are brought shall not proceed further.
- (3) The Children's Court shall, if requested by the child or by some other person on behalf of the child, explain to the child—
- (a) any aspect of the procedure of the Children's Court; and
  - (b) any decision or ruling made by the Children's Court,
- in or in relation to the proceedings.
- (4) A court shall give the child the fullest opportunity practicable to be heard, and to participate, in the proceedings.
- (6) Section 14 (**Recording of conviction**)—
- After "proceed to" wherever occurring, insert ", or record such a finding as,".
- (7) Section 24—
- Omit the section, insert instead:
- Compensation**
24. A court shall have regard to the child's means and income (if any), and the child's ability to comply with any requirement relating to the payment of compensation, when deciding—
- (a) whether or not to require a child to pay any compensation, whether under a condition of a recognizance or otherwise; or
  - (b) the amount of any compensation required to be paid by a child.
- (8) Section 25 (**Background reports**)—
- (a) Section 25 (1) (a)—
- After "offence" wherever occurring, insert "(other than contempt of court)".
- (b) Section 25 (2) (a), (b)—
- Omit the paragraphs, insert instead:
- (a) a background report, prepared in accordance with the regulations, has been tendered in evidence with respect to the circumstances surrounding the commission of the offence; and
  - (b) copies of the report have been given to the child and any other person appearing in the proceedings; and

*Children (Criminal Proceedings) Amendment 1989*


---

 SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

## (9) Section 27—

Omit section 27, insert instead:

**Application of Justices Act 1902 etc.**

27. (1) Subject to Part 2 and to the rules of the Children's Court, any Act or other law relating to the functions of Local Courts, Magistrates or justices or to criminal proceedings before them applies to—

- (a) the Children's Court; and
- (b) any criminal proceedings before the Children's Court.

(2) In particular (and subject to Part 2 and to the rules of the Children's Court), the Justices Act 1902 applies to the Children's Court and any criminal proceedings before the Children's Court.

(3) If this Part and any Act or other law applied by this section (other than the Bail Act 1978) are inconsistent, this Part shall prevail to the extent of the inconsistency.

(10) Section 29 (**Jurisdiction in respect of 2 or more co-defendants who are not all children**)—

(a) Omit section 29 (1) (d), insert instead:

(d) may continue the hearing of the charge against the person in respect of whom it has jurisdiction without any such adjournment.

(b) After section 29 (1), insert:

(1A) In deciding whether to continue the hearing of a charge against a person, the Children's Court shall have regard to the following particular matters:

- (a) whether or not the person wishes the hearing of the charge by the Court to continue;
- (b) whether or not the person has been released on bail under the Bail Act 1978;
- (c) the delay in the hearing of the charge that would be likely to result from an adjournment of the hearing;
- (d) whether or not to continue hearing the charge is in the interests of justice,

and any other matter that the Court considers relevant.

(c) Section 29 (4) (a)—

Omit "Local Court", insert instead "Magistrate".

*Children (Criminal Proceedings) Amendment 1989*

---

SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL  
PROCEEDINGS) ACT 1987—*continued*

- (11) Section 31 (**Hearing of charges in the Children's Court**)—
- (a) Section 31 (2) (b)—  
Omit “the person informs”, insert instead “if the person informs”.
- (b) Section 31 (3) (a)—  
Omit “(other than an offence that is punishable summarily without the consent of the accused)”.
- (c) Section 31 (3) (b)—  
Omit “the Children's Court is”, insert instead “if the Children's Court states that it is”.
- (d) After section 31 (4), insert:
- (5) Notwithstanding subsection (1)—
- (a) if a person is charged before the Children's Court with an indictable offence; and
- (b) if, at any stage of the proceedings, the person pleads guilty to the charge; and
- (c) if the Children's Court states that it is of the opinion that, having regard to all the evidence before it, the charge may not properly be disposed of in a summary manner,
- the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 51A of the Justices Act 1902 as if the offence were a serious indictable offence in respect of which the person had pleaded guilty as referred to in that section.
- (12) Section 33 (**Penalties**)—
- (a) Section 33 (1) (b), (e)—  
Omit “12 months” wherever occurring, insert instead “2 years”.
- (b) Section 33 (2)—  
Omit “a paragraph of subsection (1)”, insert instead “subsection (1) (g)”.
- (c) Section 33 (2)—  
Omit “a preceding paragraph of that subsection”, insert instead “subsection (1) (a)–(f)”.
- (13) Section 33A—  
After section 33, insert:  
**Cumulative or concurrent orders etc.**  
33A. (1) In this section, “control order” means an order referred to in section 33 (1) (g).

---

**SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued***

(2) Unless a direction is given under this section, the period for which a person is required to be detained under a control order commences when the order takes effect.

(3) If the Children's Court so directs, the period for which a person is required to be detained under a control order commences when the period for which the person is required to be detained under another control order expires.

(4) The Children's Court must not make a control order or give a direction under this section if the order or direction would have the effect of requiring a person—

(a) to be subject at any time to control orders requiring the person to be detained for more than 3 years (taking into account any period for which the person has already been detained under a control order to which the person is still subject); or

(b) to be detained for more than 2 periods specified in different control orders, being periods that are not to any extent concurrent.

**(14) Section 35 (Reasons for decision to be given)—**

(a) Section 35—

Omit “under a paragraph of section 33 (1)”, insert instead “under section 33 (1) (g)”.

(b) Section 35 (b)—

Omit “any of the preceding paragraphs of section 33 (1)”, insert instead “under section 33 (1) (a)–(f)”.

**(15) Section 36 (Compensation)—**

(a) Section 36 (1)—

Omit “in respect of a person who is of or above the age of 16 years”.

(b) Section 36 (2)—

Omit “financial means”, insert instead “means and income, if any”.

**(16) Section 37—**

Omit the section, insert instead:

**Term of control order**

37. (1) An order under section 33 (1) (g) takes effect—



*Children (Criminal Proceedings) Amendment 1989*

SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

- (a) except as provided by paragraphs (b) and (c)—when it is made; or
  - (b) in the case of an order arising from a warrant referred to in section 5A of the Children (Community Service Orders) Act 1987—when the warrant is issued; or
  - (c) in the case of an order arising from a warrant referred to in section 26A of the Children (Community Service Orders) Act 1987—when the person to whom the warrant relates is apprehended under the warrant.
- (2) Notwithstanding subsection (1), if the Children’s Court orders that a control order takes effect at a specified time, the order takes effect at the specified time.
- (3) An order under section 33 (1) (g) ceases to have effect at the end of the period specified in the order, subject to section 32 of the Children (Detention Centres) Act 1987.
- (17) Section 39 (**Definitions**)—
- (a) Section 39, definition of “Department”—  
Omit the definition.
  - (b) Section 39, definition of “Director-General”—  
After “Department”, insert “of Family and Community Services”.
  - (c) Section 39, definition of “officer”—  
After “Department”, insert “of Family and Community Services or in the Department of Corrective Services”.
- (18) Section 46 (**Procedures for remitting cases from one court to another**)—  
Omit the section.
- (19) Section 50A—  
After section 50, insert:
- Procedures for remitting cases from one court to another**
- 50A. (1) A court that under this Act remits proceedings to another court—
- (a) may, subject to the Bail Act 1978, commit the defendant to custody until the defendant can appear or be brought before the other court; and
  - (b) shall cause to be sent to the clerk of the other court or other proper officer all documents and depositions held by the firstmentioned court in relation to the proceedings.

*Children (Criminal Proceedings) Amendment 1989*


---

**SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued***

(2) The deposition of any witness called and examined before a court that remits proceedings to another court may be accepted as evidence for the accused or the prosecution by the other court if the other party consents to its being so accepted or if it is proved on oath—

- (a) that the witness is dead, or so ill as to be unable to travel, or cannot, after such search or for such reason as to the other court seems sufficient, be produced by the party tendering the deposition; and
- (b) that—
  - (i) in the case of a deposition taken down in writing—the deposition was taken in the presence of the other party; or
  - (ii) in the case of a deposition that is in the form of a transcript of the record made, by a means other than writing, of the evidence of the witness—the record so made is a true record of that evidence, and was made in the presence of the other party, and the transcript is a correct transcript of the record so made; and
- (c) that the other party, or the other party's barrister or solicitor, has had full opportunity to examine the witness.

(20) Section 52—

After section 51, insert:

**Savings and transitional provisions**

52. Schedule 2 has effect.

(21) Schedule 1 (**Modifications of the Probation and Parole Act 1983**)—

(a) Clause 1 (e)—

After “1987;”, insert “and”.

(b) Clause 1 (f), (g)—

Omit the paragraphs, insert instead:

- (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.

(22) Schedule 2—

After Schedule 1, insert:

**SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 52)

**PART 1—GENERAL**

*Children (Criminal Proceedings) Amendment 1989*

---

**SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued***

**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Children (Criminal Proceedings) Amendment Act 1989.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT ACT 1989**

**Definition**

2. In this Part—

“amending Act” means the Children (Criminal Proceedings) Amendment Act 1989.

**Application of amending Act to current proceedings etc.**

3. (1) An amendment made to this Act by Schedule 1 (3), (5), (6), (8), (12) (b) or (c) or (14) to the amending Act apply to proceedings pending at or commenced after the amendment commences.

(2) An amendment made to this Act by Schedule 1 (7), (10) (a) or (b), (11), (12) (a), (15) or (21) to the amending Act does not apply to proceedings commenced before the amendment commences.

(3) An amendment made by Schedule 1 (13) to the amending Act does not apply to a control order made before the amendment commences.

**Consents for publication of names etc.**

4. The amendments made to this Act by Schedule 1 (4) to the amending Act do not apply to any consent given under section 11 of this Act before those amendments commence.

**Regulations concerning background reports**

5. The amendment made to this Act by Schedule 1 (8) (b) to the amending Act does not affect any regulation made for the purposes of section 25 (2) (a) of this Act and in force immediately before that amendment commences.

*Children (Criminal Proceedings) Amendment 1989*

---

**SCHEDULE 2—AMENDMENT OF MISCELLANEOUS ACTS  
(CHILDREN'S COURT AND CRIMINAL PROCEEDINGS)  
AMENDMENT ACT 1987**

(Sec. 4)

(1) Section 2 (**Commencement**)—

Section 2 (4)—

Omit the subsection.

(2) Schedule 1 (**Amendments**)—

Omit item (2) of the provisions of Schedule 1 relating to the Bail Act 1978.

---

[*Minister's second reading speech made in—  
Legislative Assembly on 5 April 1989  
Legislative Council on 10 May 1989*]