

Act No. 270

CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Community Welfare (Amendment) Bill 1987.

The object of this Bill is to amend the Children (Criminal Proceedings) Act 1987 so as—

- (a) to extend the definition of “serious indictable offence” by allowing the regulations under that Act to prescribe additional offences for the purposes of that definition;
- (b) to require a child who is in custody pending the hearing of criminal proceedings to be brought before an authorised justice, for the purpose of determining bail, within 24 hours after being taken into custody;
- (c) to enable children on remand for certain offences to be kept in prison if they are over 16 years of age;
- (d) to require a child’s means to be taken into account when it is proposed to require the child to pay compensation in respect of an offence of which he or she has been found guilty or convicted;
- (e) to abolish “general committal” orders;
- (f) to enable children and other persons who have been found guilty of certain offences to be sentenced to imprisonment if they are over 16 years of age; and
- (g) to make other provisions of a minor, consequential or ancillary nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 gives effect to the Schedule of amendments.

Schedule 1 (1) (a) inserts a definition of “attendance notice” (meaning an attendance notice under the Justices Act 1902) into section 3 (1) of the Principal Act.

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Schedule 1 (1) (b) amends the definition of “serious indictable offence” in section 3 (1) of the Principal Act so as to enable that definition to be extended by regulations under that Act.

Schedule 1 (1) (c) omits section 3 (2) of the Principal Act as a consequence of the proposal that “attendance notices” be used in preference to the “citation” system contemplated by the Principal Act.

Schedule 1 (2) substitutes section 8 of the Principal Act. The proposed section is intended to encourage the use of attendance notices and summonses in preference to warrants.

Schedule 1 (3) (a) amends section 9 of the Principal Act as a consequence of the amendment effected by Schedule 1 (1) (a).

Schedule 1 (3) (b) amends section 9 of the Principal Act so as to remove the requirement that a child should be brought before the Children’s Court no later than the next working day.

Schedule 1 (3) (c) amends section 9 of the Principal Act so as to require a child to be brought before an authorised justice, no later than the next working day, for the purpose of determining bail.

Schedule 1 (4) inserts a new section 9A into the Principal Act. The proposed section enables a child over the age of 16 years who is charged with a serious offence to be remanded in custody in prison rather than in a detention centre. An application for a child to be so remanded may be made only by the Minister administering the Children (Detention Centres) Act 1987 and must be consented to by the Minister administering the Prisons Act 1952.

Schedule 1 (5) amends section 13 of the Principal Act so as to remove any doubt as to the admissibility in evidence of certain particulars (such as information required to be given under the Motor Traffic Act 1909) that a person is required by law to furnish.

Schedule 1 (6) repeals section 22 of the Principal Act so as to remove an inconsistency that might otherwise exist between that section and section 25 of the Bail Act 1978.

Schedule 1 (7) amends section 24 of the Principal Act so as to require a court to take a child’s means into account when ordering the child to pay compensation in respect of an offence of which the child has been found guilty.

Schedule 1 (8) substitutes section 30 of the Principal Act. The proposed section 30 enables an authorised justice to exercise the powers of the Children’s Court with respect to the adjournment of proceedings and the granting of bail.

Schedule 1 (9) (a) substitutes section 33 (1) (g) of the Principal Act so as to omit the reference in that paragraph to “general” committal orders.

Schedule 1 (9) (b) amends section 33 (4) of the Principal Act as a consequence of the insertion into that Act, by Schedule 1 (10), of proposed section 33A.

Schedule 1 (9) (c) amends section 33 of the Principal Act so as to remove any doubt as to the power of the Children’s Court to make certain ancillary orders (such as licence disqualification, forfeiture of unlawful property and restitution of stolen property) after it has found a child guilty of an offence.

Schedule 1 (10) inserts new sections 33A and 33B into the Principal Act.

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Proposed section 33A enables a person over the age of 16 years who has been found guilty of a serious offence to be committed to prison rather than to a detention centre. An application for a person to be so committed may be made only by the Minister administering the Children (Detention Centres) Act 1987 and must be consented to by the Minister administering the Prisons Act 1952. Provision is made for the review and the variation or revocation of such an order.

Proposed section 33B applies Part II of the Probation and Parole Act 1983 to a person who has been committed to a detention centre.

Schedule 1 (11) amends section 34 of the Principal Act as a consequence of the amendment effected by Schedule 1 (9) (a).

Schedule 1 (12) amends section 36 of the Principal Act so as to require the Children's Court to take a person's means into account when ordering the person to pay compensation in respect of an offence of which the person has been found guilty.

Schedule 1 (13) substitutes section 37 of the Principal Act as a consequence of the amendment effected by Schedule 1 (9) (a).

Schedule 1 (14) amends section 38 of the Principal Act so as to restrict the class of documents that must be destroyed under that section to documents prescribed by the regulations under that Act.

Schedule 1 (15) amends section 42 of the Principal Act so as to ensure that an appeal may be made against a finding of guilt even if the relevant charge has been dismissed.

Schedule 1 (16) inserts a new Schedule 1 at the end of the Principal Act. The proposed Schedule modifies the provisions of Part II of the Probation and Parole Act 1983 in their application, under the proposed section 33B, to a person who has been committed to a detention centre.
