

Act No. 75 of 1989

CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to amend the Children (Criminal Proceedings) Act 1987 in relation to—
 - (i) the remitting of cases to other courts; and
 - (ii) the granting of consent to the publication of the names of children involved in criminal proceedings; and
 - (iii) the making of orders for the payment of compensation; and
 - (iv) the jurisdiction of the Children's Court in respect of 2 or more co-defendants who are not all children; and
 - (v) the penalties that a Children's Court may impose; and
 - (vi) the duties of a court to acquaint children against whom criminal proceedings are being taken with the nature of those proceedings; and
 - (vii) other minor matters; and
- (b) to make minor amendments to the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Children (Criminal Proceedings) Act 1987.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987.

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

Schedule 1 (1) (a) inserts a new definition of “court” into section 3 (1). The proposed definition will provide that the expression “court” includes a justice.

Schedule 1 (1) (b) substitutes the definitions of “parent” and “person responsible” in section 3 (1) so as to ensure that the Minister for Family and Community Services and the Director-General of the Department of Family and Community Services may be regarded as parents or persons responsible, as the case may be, in relation to children in their care or custody.

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

Schedule 1 (2) substitutes section 7 so as to ensure that a justice or justices, as well as a Local Court, are precluded from hearing or determining criminal proceedings that the Children’s Court has jurisdiction to hear and determine (unless the Act expressly confers on them such jurisdiction).

Courts may rely on apparent age of defendants

Schedule 1 (3) inserts a new section 7A. The proposed section will allow a court to rely on a person’s apparent age for the purpose of determining whether or not it has jurisdiction with respect to that person in circumstances where no other evidence of that person’s age is readily available.

Publication of names etc.

Schedule 1 (4) (a) amends section 11 so as to increase, from 14 to 16, the age at or above which a consent to the publication of information concerning criminal proceedings against a child may be given by the child.

Schedule 1 (4) (b) further amends section 11 so as to provide that such a consent, in relation to a child who is under the age of 16, must be given by a court rather than, as is presently the case, by the Attorney General.

Schedule 1 (4) (c) further amends section 11 so as to provide that such a consent, in relation to a child who is under the age of 16, may not be given except with the concurrence of the child or (if the child is incapable of giving concurrence) where a court is of the opinion that the public interest so requires.

Courts to explain proceedings to children

Schedule 1 (5) amends section 12 so as to vary the requirements of that section with respect to the information that a court must ensure is given to children against whom criminal proceedings are being taken. It will be enough if the court takes such steps as, in its opinion, are reasonably practicable to acquaint the child with the nature of the proceedings and if the court explains to the child, whenever in the court’s opinion it is necessary to do so, aspects of the court’s procedure and its decisions or rulings.

Recording of conviction

Schedule 1 (6) amends section 14 so that the section refers to “recording a finding of guilt as a conviction” as well as to “proceeding to a conviction”.

Compensation orders against children under the age of 16 years

Schedule 1 (7) substitutes section 24 so as to remove the prohibition on a court from making an order in criminal proceedings requiring a child under the age of 16 years to pay compensation.

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Schedule 1 (15) amends section 36 so as to allow the Children's Court to make a compensation order under section 61 of the Victims Compensation Act 1987 against a child under the age of 16 years.

Background reports

Schedule 1 (8) (a) amends section 25 (which requires background reports to be given to a court prior to sentencing) so as to exclude the offence of contempt of court from the application of that section.

Schedule 1 (8) (b) further amends section 25 so as to remove the existing requirement of that section that a background report must be tendered by the prosecutor in the proceedings for the purposes of which the report has been prepared.

Application of Justices Act 1902 etc.

Schedule 1 (9) substitutes section 27 to make it clear that, not only does the Justices Act 1902 apply to the Children's Court and proceedings before it, but also any other Act or law relating to Local Courts or justices.

Jurisdiction in respect of 2 or more co-defendants who are not all children

Schedule 1 (10) (a) amends section 29 so as to remove the existing requirement that, where a charge is made against co-defendants who are not all subject to the jurisdiction of the Children's Court, the Children's Court must adjourn the hearing of the charge against the defendant before it if he or she does not consent to the hearing continuing while the charge against any co-defendant has yet to be determined.

Schedule 1 (10) (b) further amends section 29 by inserting a new subsection (1A) which requires the Children's Court, before continuing the hearing of a charge against a defendant in the circumstances mentioned above, to take into account certain matters, such as the wishes of the defendant and the delay in dealing with the charge which would be likely to result from an adjournment.

Schedule 1 (10) (c) amends section 29 (4) by way of statute law revision.

Remission or hearing of charges by the Children's Court

Schedule 1 (11) (a), (b) and (c) amend section 31 by way of statute law revision.

Schedule 1 (11) (d) amends section 31 so as to enable proceedings for an indictable offence to be remitted to a superior court for the sentencing of a defendant if the defendant has pleaded guilty to the offence and if the Children's Court is of the opinion that the proceedings may not properly be disposed of in a summary manner (proposed section 31 (5)).

Schedule 1 (11) (d) further amends section 31 so as to enable the Children's Court, where proceedings are brought against a person who is of or above the age of 18 years, to remit those proceedings to a Local Court, or to sit as a Local Court, if the Children's Court is of the opinion that the case ought not to be dealt with by it (proposed section 31 (6)-(8)).

Schedule 1 (18) and (19) omit section 46 and insert a new section 50A, respectively, as a consequence of the proposed amendments to section 31 enabling the Children's Court to remit proceedings to a Local Court or Magistrate.

Penalties

Schedule 1 (12) (a) amends section 33 (1) (b) and (e) so as to empower the Children's Court to require a person to enter into a recognizance, or to release a person on probation, for a period of up to 3 years. (The period of a recognizance or probation is currently restricted to 1 year.)

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Schedule 1 (12) (b) and (c) further amend section 33 so as to replace the existing "ranking" of penalties with a provision that merely requires the Children's Court to consider all non-custodial penalties before deciding to commit a child to a detention centre. Schedule 1 (14) makes a consequential amendment to section 35.

Cumulative or concurrent control orders

Schedule 1 (13) inserts a new section 33A to provide for the circumstances in which the Children's Court may make orders under section 33 (1) (g) committing a person to the control of the Minister administering the Children (Detention Centres) Act 1987 that take effect consecutively, rather than concurrently. The proposed section will preclude the Court from making control orders if, as a consequence, a person would be required to be detained in a detention centre for more than 3 years. Schedule 1 (21) makes a consequential amendment to Schedule 1 to the Act.

Term of control order

Schedule 1 (16) substitutes section 37 so as to remove a reference to a repealed section of the Children (Care and Protection) Act 1987 and so as to remove any doubt as to when a control order under the Act takes effect.

Definitions for the purposes of Division 5 of Part 3

Schedule 1 (17) amends section 39 so as to allow officers employed within the Department of Corrective Services to be appointed as authorised officers for the purposes of Division 5 of Part 3.

Savings and transitional provisions

Schedule 1 (20) inserts a new section 52. The proposed section gives effect to the proposed Schedule 2.

Schedule 1 (22) inserts a new Schedule 2. The proposed Schedule contains—

- (a) provisions enabling the Governor-in-Council to make regulations of a savings and transitional nature (Part 1, clause 1); and
- (b) provisions consequent on the enactment of the proposed Act (Part 2, clauses 2–5).

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

Schedule 2 omits item (2) of the provisions of Schedule 1 relating to the Bail Act 1978 and makes a consequential amendment to section 2. That item, and the amendment to the Bail Act 1978 made by it, have not commenced. The amendment to the Bail Act 1978 was intended to prohibit the consent of a child from being sought or given to the remand of the child in custody for more than 8 days.
