

CHILDREN (CRIMINAL PROCEEDINGS) 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 Bill 1987.

The object of this Bill is to re-enact, with modifications, the provisions of Part VIII, and Divisions 4–7 of Part IX, of the Community Welfare Act 1982, being the provisions of that Act that relate to the conduct of criminal proceedings against children and other young persons.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 defines certain expressions for the purposes of the proposed Act, in particular, the expressions “serious indictable offence” and “traffic offence”.

PART 2—CRIMINAL PROCEEDINGS GENERALLY

DIVISION 1—*Preliminary*

Clause 4 provides that the proposed Part applies to all courts exercising criminal jurisdiction and all criminal proceedings before those courts.

Clause 5 provides that it shall be conclusively presumed that no child under the age of 10 years can be guilty of an offence.

* Amended in committee—see table at end of volume.

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Clause 6 specifies the principles to which a court shall have regard when exercising criminal jurisdiction with respect to children.

Clause 7 prevents a Local Court from hearing criminal proceedings which lie within the jurisdiction of the Children's Court.

DIVISION 2—Commencement of proceedings

Clause 8 provides that if criminal proceedings are to be taken against a child they shall be commenced by way of summons or citation unless—

- (a) the offence belongs to a specified class of serious offences;
- (b) there are reasonable grounds for believing that the child is likely to commit acts of violence; or
- (c) there are reasonable grounds for believing that the child is unlikely to appear before a court in compliance with a summons or citation.

Clause 9 provides that if criminal proceedings are to be commenced against a child otherwise than by way of summons or citation, the child shall be brought before the Children's Court not later than the next working day after the child is taken into custody.

DIVISION 3—Hearings

Clause 10 provides for the exclusion of persons from a court while the court is hearing criminal proceedings to which a child is a party.

Clause 11 prohibits the publication or broadcasting of the name, or any other matter that may lead to the identification, of a child who is in any way mentioned or involved in any criminal proceedings.

Clause 12 requires a court that is hearing criminal proceedings against a child to take such measures as are reasonable to ensure that the child understands the proceedings, and further requires the court to ensure that the child has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

Clause 13 provides that any statement, confession, admission or information that a child has made or given to a member of the police force shall not be admitted in evidence against the child unless it was made or given in the presence of a person responsible for the child or certain other adult persons (other than a member of the police force) or unless there are particular circumstances that warrant its admission in evidence.

Clause 14 prevents a court from proceeding to a conviction in relation to a child who is under the age of 16 years and enables a court to refuse to proceed to a conviction in relation to a child who is of or above the age of 16 years.

Clause 15 restricts the admissibility in evidence in criminal proceedings against a person of prior findings of guilt in respect of offences committed when the person was a child. The clause permits prior cautions to be taken into account on the imposition of any penalty.

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DIVISION 4—*Penalties*

Clause 16 provides that the proposed Division applies to persons who have pleaded guilty to indictable offences in, or have been found guilty or convicted of indictable offences by, a court other than the Children's Court, who were children when the offences were committed and who were under the age of 21 years when charged before the court.

Clause 17 requires a person to whom the proposed Division applies to be dealt with according to law in relation to a serious indictable offence.

Clause 18 enables a person to whom the proposed Division applies to be dealt with in relation to an indictable offence other than a serious indictable offence—

- (a) according to law; or
- (b) in accordance with Division 4 of proposed Part 3.

Clause 19 enables a court that sentences a person to whom the proposed Division applies to a term of imprisonment, in respect of an indictable offence, to direct that the whole or any part of the sentence be served in a detention centre.

Clause 20 enables a court to remit a person to whom the proposed Division applies to the Children's Court, in respect of an indictable offence other than a serious indictable offence, to be punished by the Children's Court.

Clause 21 confers certain rights of appeal on a person who is remitted to the Children's Court as referred to in clause 20.

DIVISION 5—*General*

Clause 22 prevents a court from adjourning committal proceedings against a child for more than 14 days at a time if, on the adjournment, it proposes to refuse bail to the child during the adjournment.

Clause 23 modifies section 82 of the Justices Act 1902 so as to ensure that children and other young persons who would otherwise be imprisoned for fine default shall instead be detained in detention centres for the period for which they would otherwise be imprisoned.

Clause 24 prohibits a court from requiring a child who is under the age of 16 years to pay compensation in connection with any criminal proceedings taken against the child.

Clause 25 requires a court to have regard to a background report prepared, in accordance with the regulations under the proposed Act, in respect of a child or other young person before sentencing the child or young person to imprisonment or detention.

PART 3—CRIMINAL PROCEEDINGS IN THE CHILDREN'S COURT

DIVISION 1—*Preliminary*

Clause 26 provides that the proposed Part applies to the Children's Court and all criminal proceedings before the Children's Court, and further provides that, in the event of any inconsistency between the proposed Part and proposed Part 2, the proposed Part 3 shall prevail to the extent of the inconsistency.

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Clause 27 provides that, subject to proposed Part 2 and to the rules of the Children's Court, the Justices Act 1902 applies to the Children's Court and all criminal proceedings before the Children's Court, and further provides that, in the event of any inconsistency between the proposed Part and the Justices Act 1902, the proposed Part 3 shall prevail to the extent of the inconsistency.

Clause 28 provides that the Children's Court has jurisdiction to hear and determine—

- (a) proceedings in respect of any offence (whether indictable or otherwise) other than a serious indictable offence; and
- (b) committal proceedings in respect of any indictable offence (including a serious indictable offence),

if the offence is alleged to have been committed by a person who was a child when the offence was committed and who was under the age of 21 years when charged before the Children's Court with the offence, but further provides that the Children's Court does not, except in certain instances, have jurisdiction to hear or determine proceedings in respect of a traffic offence.

Clause 29 establishes the jurisdiction of the Children's Court in respect of offences where there are several defendants who are not all children.

DIVISION 2—Commencement of proceedings

Clause 30 enables the Governor-in-Council to make rules, under section 23 of the proposed Children's Court Act 1987, with respect to the manner in which criminal proceedings may be commenced in the Children's Court, so enabling the establishment of a "citation" procedure that will facilitate the commencement of proceedings without the necessity for process being issued out of the Children's Court before a charge can be heard against a child.

DIVISION 3—Hearings

Clause 31 provides that proceedings before the Children's Court in respect of all offences (other than serious indictable offences) shall be dealt with summarily, but further provides that, in certain instances, the accused person or the Children's Court may decide that the proceedings be determined by a superior court, in which case the child is to be committed for trial to the superior court.

DIVISION 4—Penalties

Clause 32 provides that the proposed Division applies to all offences for which proceedings are being dealt with summarily or in respect of which a person has been remitted to the Children's Court as referred to in clause 20.

Clause 33 specifies the penalties that the Children's Court may impose on a child whom it has found guilty of an offence to which the proposed Division applies:

- (a) it may dismiss the charge (whether or not it also cautions the child) in respect of the offence;
- (b) it may release the child on a recognizance;
- (c) it may impose a fine (not exceeding \$500 or the maximum fine prescribed by law in respect of the offence) on the child;

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- (d) it may do both of the things referred to in paragraphs (b) and (c);
- (e) it may release the child on probation;
- (f) it may make an order under section 5 of the proposed Children (Community Service Orders) Act 1987 requiring the child to perform community service work;
- (g) it may commit the child to the control of the Minister administering the proposed Children (Detention Centres) Act 1987.

The clause provides that the Children's Court shall not deal with the child under any of the paragraphs above unless it is satisfied that it would be wholly inappropriate to deal with the child under a preceding paragraph, and further provides that it shall not have regard to the question of whether the child is a child in need of care within the meaning of the proposed Children (Care and Protection) Act 1987.

Clause 34 provides that a child may not be committed to the control of the Minister administering the proposed Children (Detention Centres) Act 1987 except in relation to an offence for which the law prescribes imprisonment as the penalty for the offence, and further provides that the period for which a child may be so committed shall not exceed the maximum period of imprisonment so prescribed.

Clause 35 requires the Children's Court to give a written statement to the prosecutor and to the person whom it has punished (and, if the person is a child, to a person responsible for the child) explaining why it has imposed the punishment that it has and why it considers that it would have been wholly inappropriate to impose a lesser punishment.

Clause 36 enables the Children's Court to make an order under section 554 of the Crimes Act 1900 for the payment of compensation by a child who is of or above the age of 16 years.

Clause 37 specifies that an order committing a person to the control of the Minister administering the proposed Children (Detention Centres) Act 1987 ceases to have effect—

- (a) in the case of a general order—at the end of 12 months; and
- (b) in the case of an order made for a specified period of time—at the end of that period.

Clause 38 requires the Children's Court to order the destruction of all photographs, finger-prints, palm-prints and records (other than court records) relating to an offence in respect of which it has ordered a charge to be dismissed and enables the Children's Court to make such an order in relation to an offence in respect of which it has made some other order.

DIVISION 5—*General*

Clause 39 defines certain expressions for the purposes of the proposed Division.

Clause 40 provides for the variation of recognizance or probation imposed on a person as referred to in clause 33.

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Clause 41 provides for the enforcement of the conditions of recognizance or probation imposed on a person as referred to in clause 33, and further provides for the revocation of recognizance or probation, in the event of a breach of those conditions, and the imposition on the person of an alternative punishment.

Clause 42 provides that an appeal may be made from a decision of the Children's Court, in accordance with Part V of the Justices Act 1902, and further provides that a person shall not be required to lodge a security for the prosecution of any such appeal.

PART 4—MISTAKE IN EXERCISE OF JURISDICTION

Clause 43 defines certain expressions for the purposes of the proposed Part.

Clause 44 enables a court to remit a case which it does not have jurisdiction to hear or determine to some other court that does have jurisdiction.

Clause 45 requires an application to be made for the review of any decision made by a court on a mistaken assumption concerning the age of the person the subject of the decision, and empowers the court to which such an application is made to set aside, quash or vary the decision or remit the case to another court.

Clause 46 provides for the remission of cases from one court to another, with particular regard to the transfer of depositions already taken by the court by which the case is being remitted.

Clause 47 ensures that no action for damages or compensation shall lie against any person arising out of a decision or any thing done pursuant to the decision, or the setting aside, quashing or variation of a decision, pursuant to any provision of the proposed Part.

Clause 48 ensures that nothing in the proposed Part shall limit the operation of the presumption referred to in clause 5.

PART 5—MISCELLANEOUS

Clause 49 provides that, subject to proposed Part 3, proceedings for an offence against the proposed Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 50 provides that the Bail Act 1978 prevails in the event of an inconsistency between that Act and the proposed Act.

Clause 51 enables the Governor-in-Council to make regulations for the purposes of the proposed Act.
