

Passed by both Houses



New South Wales

Children (Criminal Proceedings) Amendment Bill 2008

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2008*



New South Wales

Children (Criminal Proceedings) Amendment Bill 2008

Act No , 2008

An Act to amend the *Children (Criminal Proceedings) Act 1987* and certain other legislation to make further provision with respect to the conduct of criminal proceedings against children and other young persons.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children (Criminal Proceedings) Amendment Act 2008*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 6 commences on the date of assent to this Act.

3 Amendment of Children (Criminal Proceedings) Act 1987 No 55

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

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

5 Consequential amendments to other legislation

The Acts and Regulation specified in Schedule 3 are amended as set out in that Schedule.

6 Repeal of Crimes Amendment (Detention after Arrest) Act 1997 No 48

The *Crimes Amendment (Detention after Arrest) Act 1997* is repealed.

7 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987

(Section 3)

[1] Section 2 Commencement

Insert after section 2 (1):

- (1A) Section 9 commences on the date that section 9 (2) is repealed by the *Children (Criminal Proceedings) Amendment Act 2008*.

[2] Section 3 Definitions

Omit the definition of *parent* from section 3 (1). Insert instead:

parental responsibility, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.

[3] Section 3 (1), definition of “person responsible”

Omit the definition. Insert instead:

person responsible, in relation to a child, means:

- (a) a person having parental responsibility for the child, or
- (b) a person who has the care of the child (whether or not the person has parental responsibility for the child).

[4] Section 3 (1)

Insert in alphabetical order:

road transport legislation has the same meaning as it has in the *Road Transport (General) Act 2005*.

[5] Section 3 (1), definition of “traffic offence”

Omit “within the meaning of the *Road Transport (General) Act 2005*” from paragraph (a).

[6] Section 3 (1), definition of “traffic offence”

Omit paragraph (c). Insert instead:

- (c) the *Motor Accidents Compensation Act 1999*, or

[7] Section 6 Principles relating to exercise of functions under Act

Omit “A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles”.

Insert instead “A person or body that has functions under this Act is to exercise those functions having regard to the following principles”.

[8] Section 6 (f)–(h)

Insert after section 6 (e):

- (f) that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties,
- (g) that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions,
- (h) that, subject to the other principles described above, consideration should be given to the effect of any crime on the victim.

[9] Section 9 Expedition where child in custody

Omit section 9 (2).

[10] Section 10 Exclusion of general public from criminal proceedings

Omit paragraphs (c) and (d) of the definition of *member of the immediate family* in section 10 (4).

Insert instead:

- (c) a parent or step-parent of the victim, or person having parental responsibility for the victim, or
- (d) a child or step-child of the victim, or some other child for whom the victim has parental responsibility, or

[11] Section 12 Proceedings to be explained to children

Omit section 12 (1)–(2A). Insert instead:

- (1) If criminal proceedings are brought against a child, the court that hears those proceedings must take such measures as are reasonably practicable to ensure that the child understands the proceedings.

[12] Section 13 Admissibility of certain statements etc

Omit “16 years” from section 13 (1) (a) (iii). Insert instead “14 years”.

[13] Section 13 (2) (c)

Insert at the end of section 13 (2) (b):

, and

- (c) a reference to a person responsible for a child does not include a member of the police force (unless he or she has parental responsibility for the child).

[14] Section 18 Other indictable offences

Omit section 18 (3). Insert instead:

- (3) If a court, in exercising the functions of the Children's Court under subsection (2), makes an order under section 33 that provides for a person to enter into a good behaviour bond or that releases a person on probation, the court may, on referral from the Children's Court under section 40 (1A), deal with the order in the same way as the Children's Court may deal with it under section 40.

[15] Section 19 Court may direct imprisonment to be served as a juvenile offender

Insert after section 19 (1):

- (1A) In the case of a person of or above the age of 18 years who is serving, or has previously served, the whole or any part of a term of imprisonment in a correctional centre, such an order may not be made unless the court decides that there are special circumstances justifying detention of the person as a juvenile offender.

[16] Section 19 (4)–(4B)

Omit section 19 (4). Insert instead:

- (4) A finding of special circumstances for the purposes of subsection (1A) or (3) may be made on one or more of the following grounds, and not otherwise:
 - (a) that the person is vulnerable on account of illness or disability (within the meaning of the *Anti-Discrimination Act 1977*),
 - (b) that the only available educational, vocational training or therapeutic programs that are suitable to the person's needs are those available in detention centres,
 - (c) that, if the person were committed to a correctional centre, there would be an unacceptable risk of the person suffering physical or psychological harm, whether due to the nature

of the person's offence, any assistance given by the person in the prosecution of other persons or otherwise.

- (4A) In particular, a finding of special circumstances may not be made simply because of the person's youth or simply because the non-parole period of the person's sentence will expire while the person is still eligible to serve the sentence as a juvenile offender.
- (4B) A court that makes a finding of special circumstances must make a record of its reasons for making that finding in the particular case.

[17] Section 19 (8)

Insert after section 19 (7):

- (8) In this section:
correctional centre has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

[18] Section 31 Hearing of charges in the Children's Court

Insert "(including any background report of a kind referred to in section 25)" after "evidence before it" in section 31 (5) (c).

[19] Section 33 Penalties

Omit section 33 (1) (a). Insert instead:

- (a) it may make an order:
- (i) directing that the charge be dismissed (in which case the Court may also, if it thinks fit, administer a caution to the person), or
 - (ii) discharging the person on condition that the person enters into a good behaviour bond for such period of time, not exceeding 2 years, as it thinks fit,

[20] Section 33 (1) (b)

Omit the paragraph. Insert instead:

- (b) it may make an order directing the person to enter into a good behaviour bond for a specified period, not exceeding 2 years,

[21] Section 33 (1) (e1)

Insert after section 33 (1) (e):

- (e1) it may do both the things referred to in paragraphs (c) and (e),

[22] Section 33 (1) (f1)

Insert after section 33 (1) (f):

- (f1) it may do both of the things referred to in paragraphs (e) and (f),

[23] Section 33 (1) (g)

Omit the paragraph. Insert instead:

- (g) it may, subject to the provisions of the *Crimes (Sentencing Procedure) Act 1999*, make an order committing the person for such period of time (not exceeding 2 years) as it thinks fit:
 - (i) in the case of a person who is under the age of 21 years, to the control of the Minister administering the *Children (Detention Centres) Act 1987*, or
 - (ii) in the case of a person who is of or above the age of 21 years, to the control of the Minister administering the *Crimes (Administration of Sentences) Act 1999*.

[24] Section 33 (1A)

Omit “referred to in subsection (1) (b)”.

Insert instead “imposed under this section”.

[25] Section 33 (1AA)

Insert after section 33 (1A):

- (1AA) Before making an order imposing a fine on a child, the Children’s Court is to consider the age of the child and the following matters, where information is available in relation to those matters:
 - (a) the child’s ability to pay the fine,
 - (b) the potential impact of the fine on the rehabilitation of the child.

[26] Section 33 (1B)

Omit “except to the extent to which it deals with setting the non-parole period and the balance of the term of the order”.

[27] Section 33 (1C)

Insert after section 33 (1B):

- (1C) If the Children’s Court makes an order under subsection (1) (g)
 - (ii) committing a person to the control of the Minister

administering the *Crimes (Administration of Sentences) Act 1999*, the period for which the person is committed is taken to be a sentence of imprisonment for the purposes of that Act.

[28] Section 33 (2)

Omit “(f)”. Insert instead “(f1)”.

[29] Section 33 (5) (a)

Omit “within the meaning of the *Road Transport (General) Act 2005*”.

[30] Section 33 (6)

Insert after section 33 (5):

- (6) For the purposes of any provision of the road transport legislation that confers power on a court with respect to a person who has been convicted of an offence, a finding of guilt by the Children’s Court for an offence is taken to be a conviction for the offence. Accordingly, following a finding of guilt, the Children’s Court may exercise any power it could exercise under that legislation if the person had been convicted of the offence, unless the Court makes an order in respect of the person under section 33 (1) (a).

Note. Section 14 limits the circumstances in which a court can proceed to, or record, a conviction following a finding of guilt in relation to a child offender.

[31] Section 33A Cumulative or concurrent orders etc

Insert “or other control orders” after “another control order” in section 33A (3).

[32] Section 33A (4)

Omit the subsection. Insert instead:

- (4) The Children’s Court must not make a new control order, or give a direction under this section, if the order or direction would have the effect of requiring a person to be detained for a continuous period of more than 3 years (taking into account any other control orders relating to the person).

[33] Section 33AA Cumulative or concurrent orders—assault on juvenile justice officers

Omit “another control order (the *existing control order*)” from section 33AA (2) (b).

Insert instead “one or more other control orders (an *existing control order*)”.

[34] Section 33AA (3)

Insert “or, if there is more than one, the last of them” after “an existing control order”.

[35] Section 33AA (5)

Omit the subsection. Insert instead:

- (5) The Children’s Court must not make a new control order, or give such a direction, if the order or direction would have the effect of requiring a person to be detained for a continuous period of more than 3 years (taking into account any other control orders relating to the person).

[36] Section 33C Application of Crimes (Sentencing Procedure) Act 1999 to children

Omit “The provisions”. Insert instead “Subject to this Act, the provisions”.

[37] Section 33C (d)

Insert at the end of section 33C (c):

, and

- (d) a reference in those provisions to a good behaviour bond were a reference to a good behaviour bond imposed under section 33.

[38] Section 33C (2)

Insert at the end of section 33C:

- (2) To avoid doubt, Division 2 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* (which relates to victim impact statements) applies to any offence dealt with by the Children’s Court that is an offence to which that Division would apply if it were being dealt with by a Local Court.

[39] Section 33D Non-association and place restriction orders

Omit “section 33 (1) (paragraphs (a),” from section 33D (2).

Insert instead “section 33 (subsection (1) (a) (i),”.

[40] Section 33D (5)

Omit “referred to in section 33 (1) (b) or (e)”.

Insert instead “under section 33 providing for a person to enter into a good behaviour bond or releasing a person on probation”.

[41] Section 34 Restrictions on the imposition of control orders etc

Insert “, (f1)” after “(f)” in section 34 (1).

[42] Section 35 Reasons for decision to be given

Omit “(f)” from section 35 (b). Insert instead “(f1)”.

[43] Section 36 Compensation

Omit section 36 (3). Insert instead:

- (3) The maximum amount of compensation that may be awarded is:
 - (a) the amount that is equivalent to 10 penalty units (in the case of a person who is under the age of 16 years at the time the order is made), or
 - (b) the amount that is equivalent to 20 penalty units (in any other case).

[44] Section 38 Destruction of photographs, finger-prints etc

Omit section 38 (1) and (2). Insert instead:

- (1) If the Children’s Court finds a person not guilty of an offence to which this Division applies, or finds a person guilty of such an offence but makes an order dismissing the charge under section 33 (1) (a) (i), the Children’s Court is to make an order that requires any photographs, finger-prints and palm-prints, and any other prescribed records (other than records of the Children’s Court), relating to the offence to be destroyed.
- (2) If the Children’s Court finds a person guilty of an offence to which this Division applies and makes any other order in respect of the person under section 33, it may, if it is of the opinion that the circumstances of the case justify its doing so, make an order (whether on the application of the person or otherwise) that requires any photographs, finger-prints and palm-prints, and any other prescribed records (other than records of the Children’s Court), relating to the offence to be destroyed.

[45] Section 40 Variation of good behaviour bond or probation

Omit “referred to in section 33 (1) (b) or (e)” from section 40 (1) and (2), wherever occurring.

Insert instead “under section 33 that provides for a person to enter into a good behaviour bond or that releases a person on probation”.

[46] Section 41A Provisions applicable where control order suspended subject to good behaviour bond

Omit section 41A (3) (b) and (c). Insert instead:

- (b) Part 4 of the *Crimes (Sentencing Procedure) Act 1999* applies to the order under section 33 (1) (g), as if the order were a sentence of imprisonment being imposed following the revocation of the good behaviour bond, and section 24 of that Act applies in relation to the setting of a non-parole period under that Part.

[47] Section 51 Regulations

Omit “under section 33 (1) (b) and (e)” from section 51 (1) (a).

Insert instead “under section 33 that provide for a person to enter into a good behaviour bond or release a person on probation”.

[48] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Children (Criminal Proceedings) Amendment Act 2008

[49] Schedule 2, Part 14

Insert after Part 13:

Part 14 Children (Criminal Proceedings) Amendment Act 2008

19 Definition

In this Part:

amending Act means the *Children (Criminal Proceedings) Amendment Act 2008*.

20 Detention of adults in juvenile detention centres

An amendment made to section 19 by the amending Act applies in respect of any direction made under that section on or after the commencement of the amendment.

21 Changes to penalty provisions

- (1) An amendment made to section 33 by the amending Act applies only in respect of an offence committed on or after the commencement of the amendment, except as otherwise provided by this clause.

- (2) The amendment made to section 33 (1B) by the amending Act relating to the setting of a non-parole period, and the amendment made to section 41A by the amending Act, extend to proceedings commenced (but not concluded) before the commencement of the amendments (including proceedings for offences committed before the commencement of the amendments).
- (3) The amendment made to section 41A by the amending Act extends to proceedings in respect of a good behaviour bond entered into before the commencement of the amendment.
- (4) The amendment to section 41A does not require a non-parole period in respect of an order under section 33 (1) (g) to be set on termination of a good behaviour bond entered into before the commencement of the amendment if the non-parole period was set at the time that the order under section 33 (1) (g) was suspended.

22 Change to maximum amount of compensation

The amendment made to section 36 by the amending Act applies only in respect of offences committed on or after the commencement of the amendment.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Children (Community Service Orders) Act 1987 No 56

[1] Section 3 Definitions

Omit the definitions of *community service work* and *work* from section 3 (1).

Insert in alphabetical order:

community service work means any unpaid work, service or activity approved by the Minister, or of a class or description approved by the Minister, and includes any personal development, educational or other program of a class or description approved by the Minister.

perform community service work includes participate in any personal development, educational or other program that is community service work.

[2] Section 5 Making of children's community service orders

Insert after section 5 (1A):

(1B) An order under this section may recommend that the community service work to be performed by the person in respect of whom the order is made should include participation in a personal development, educational or other program.

[3] Section 13 Number of hours of community service work

Omit "hours of work" from section 13 (3) (a) and (b), (3A) and (5), wherever occurring.

Insert instead "hours of community service work".

[4] Section 17 Obligations of persons subject to children's community service orders

Omit "work" from section 17 (1) (b) and (c) and (2), wherever occurring.

Insert instead "community service work".

[5] Section 17 (3)

Insert after section 17 (2):

(3) The community service work to be performed by a person in respect of whom a children's community service order is in force (being an order containing a recommendation referred to in

section 5 (1B)) must, if practicable, include participation in a personal development, educational or other program.

[6] Section 18 Directions

Omit “work” from section 18 (1) and (1A) wherever occurring.

Insert instead “community service work”.

[7] Section 18 (1B)

Insert after section 18 (1A):

(1B) Subsection (1) does not apply in respect of participation in a personal development, educational or other program.

[8] Part 6, heading

Omit “work incidents”. Insert instead “community service work”.

[9] Sections 26B, 26C (except heading), 26D (except heading) and 26F

Omit “work” wherever occurring. Insert instead “community service work”.

[10] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Children (Criminal Proceedings) Amendment Act 2008, to the extent that it amends this Act

[11] Schedule 1, clause 4

Insert after clause 3:

4 Provisions consequent on enactment of Children (Criminal Proceedings) Amendment Act 2008

Any approval of the Minister or the Director-General in respect of work under this Act that is in force immediately before the repeal of the definition of *work* by the *Children (Criminal Proceedings) Amendment Act 2008* is taken, on that repeal, to be an approval in respect of community service work.

2.2 Criminal Procedure Act 1986 No 209

Section 210 Penalties applying to traffic offences committed by children

Insert at the end of paragraph (d) of the definition of *traffic offence* in section 210 (4):

or

(e) the *Motor Accidents Compensation Act 1999*,

Schedule 3 Consequential amendments to other legislation

(Section 5)

3.1 Children (Criminal Proceedings) Regulation 2005

[1] Clause 7 Conditions that may be imposed on certain orders

Omit “under section 33 (1) (b) or (e) of the Act”.

Insert instead “under section 33 of the Act that provides for the child to enter into a good behaviour bond or releases the child on probation”.

[2] Clause 7 (2)

Insert at the end of clause 7:

- (2) If the Children’s Court makes an order releasing a person on probation under section 33 (1) (e) of the Act and also makes an order requiring the person to perform community service work under section 33 (1) (f) of the Act, the order releasing the person on probation may include a condition that requires the person to comply with the community service work order.

3.2 Children (Interstate Transfer of Offenders) Act 1988 No 85

Section 3 Definitions

Omit “order under section 33 (1) (b), (e) or (f)” from paragraph (b) (ii) of the definition of *young offender*.

Insert instead “order providing for the person to enter into a good behaviour bond, releasing the person on probation or requiring the person to perform community service work under section 33”.

3.3 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 4 Application of Part

Insert after section 4 (1) (d):

- (d1) any person the subject of an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987* by which the Children’s Court has committed the person to the control of the Minister administering this Act, and

[2] Section 4 (1) (e)

Omit “referred to in paragraph (a), (b), (c) or (d)”.

Insert instead “referred to above”.

3.4 Victims Support and Rehabilitation Act 1996 No 115

Dictionary

Omit paragraph (b) of the definition of *conviction*.

Insert instead:

- (b) (except in Part 4) an order made under section 33 of the *Children (Criminal Proceedings) Act 1987* (other than section 33 (1) (a) (i)).