



New South Wales

# Children (Criminal Proceedings) Amendment Bill 2008

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Courts and Crimes Legislation Amendment Bill 2008*.

## Overview of Bill

The object of this Bill is to amend the *Children (Criminal Proceedings) Act 1987* (the *Principal Act*) as follows:

- (a) to extend the guiding principles of the Principal Act,
- (b) to impose a general duty on the Children's Court to ensure that criminal proceedings are explained to any child who is the subject of the criminal proceedings,
- (c) to allow a child aged 14 years or over to be accompanied by an interview friend (who is not their parent) when being interviewed by police,
- (d) to make further provision with respect to the detention of adults in juvenile detention centres,
- (e) to make provision for the imposition of good behaviour bonds by the Children's Court more consistent with the *Crimes (Sentencing Procedure) Act 1999*,

- (f) to enable the Children's Court to impose a fine in addition to probation in respect of a person found guilty of an offence,
- (g) to enable the Children's Court to impose both a community service order and a probation order in respect of a person found guilty of an offence,
- (h) to require the Children's Court to take certain matters into consideration before imposing a fine on a child,
- (i) to enable the Children's Court to exercise certain powers under road transport legislation in relation to persons whom it finds guilty of an offence (in the absence of a conviction),
- (j) to increase the maximum amount of compensation that may be ordered by the Children's Court,
- (k) to allow more than 2 consecutive or concurrent control orders to be imposed in respect of a child offender (up to a maximum total detention period of 3 years),
- (l) to repeal an uncommenced provision of the Principal Act relating to bail,
- (m) to confirm that background reports on children and victim impact statements may be utilised in certain proceedings before the Children's Court,
- (n) to remove the requirement that a non-parole period be set at the time that a control order is made, if the control order is suspended,
- (o) to make other minor, consequential and ancillary amendments.

The Bill also:

- (a) amends the *Children (Community Service Orders) Act 1987* so that participation in an approved personal development, educational or other program may be counted as community service work, and
- (b) amends the *Criminal Procedure Act 1986* to extend the powers of a Local Court when dealing with traffic offences committed by children, and
- (c) makes consequential amendments to other legislation.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation with the exception of clause 6, which commences on the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Children (Community Service Orders) Act 1987* and the *Criminal Procedure Act 1986* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the consequential amendments to other legislation set out in Schedule 3.

**Clause 6** repeals the *Crimes Amendment (Detention after Arrest) Act 1997* which contains an uncommenced amendment to section 9 of the Principal Act that is now redundant. The remaining provisions of that Act have commenced.

**Clause 7** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment of Children (Criminal Proceedings) Act 1987**

### **Extension of guiding principles of Principal Act**

**Schedule 1 [7]** requires all persons or bodies exercising functions under the Principal Act (rather than just a court) to have regard to the guiding principles set out in the Act when exercising functions under the Act.

**Schedule 1 [8]** provides for the following additional principles of the Principal Act:

- (a) 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,
- (b) that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions,
- (c) that, subject to the other principles of the Act, consideration should be given to the effect of any crime on the victim.

### **Explanation of proceedings**

At present, section 12 of the Principal Act requires the Children's Court to be satisfied that criminal proceedings being brought against a child have been explained to the child, before the proceedings go ahead. **Schedule 1 [11]** replaces that requirement with a requirement that the Children's Court itself ensure that the child understands the criminal proceedings.

### **Interview friends**

Under section 13 of the Principal Act, a statement made by a child to police is not admissible in evidence in criminal proceedings unless the child was at the time in the company of a person responsible for the child (generally a parent), an adult nominated by that person or a lawyer. Alternatively, a child who is aged 16 years or over may himself or herself nominate any adult to accompany him or her in the interview. **Schedule 1 [12]** extends this entitlement to children aged 14 years and over. **Schedule 1 [13]** is a related amendment, to ensure that a police officer who has care of a child cannot be considered to be such an interview friend.

**Schedule 1 [3]** updates the definition of *person responsible* for a child, so that it includes any person who has parental responsibility for a child. This expression is consistent with the *Children and Young Persons (Care and Protection) Act 1998*. **Schedule 1 [10]** is a similar amendment to the definition of *member of the immediate family* of a person. **Schedule 1 [2]** is a related amendment.

### **Detention of adults in juvenile detention centres**

At present, a court (other than the Children's Court) can direct that all or any part of a sentence of imprisonment imposed on a person who is under 21 years of age be served by that person in a children's detention centre rather than a correctional centre.

**Schedule 1 [15]** provides that such a direction may not be given in respect of a person who is of or above the age of 18 years, and who is serving (or has previously served) a term of imprisonment in a correctional centre, unless the court is satisfied that there are special circumstances to justify such a direction.

This requirement is in addition to the existing requirement that a person who is of or above the age of 18 years, and who is sentenced to imprisonment for a serious children's indictable offence is not eligible to serve the sentence as a juvenile offender, unless the sentencing court is satisfied that there are special circumstances to justify such a direction.

**Schedule 1 [16]** makes it clear that special circumstances can only be found on one or more of three grounds, namely, that the offender is vulnerable on account of illness or disability, that the only available educational, vocational training or therapeutic programs for the offender are those offered at detention centres or that there would be an unacceptable risk of the offender suffering harm if he or she were to be committed to a correctional centre. It also requires a court that makes a finding of special circumstances to make a record of its reasons for making that finding in the particular case.

**Schedule 1 [22]** provides that if an offender is detained under an order of the Children's Court, or a court exercising the functions of the Children's Court, known as a control order, and the offender is of or above the age of 21 years, the offender is to be committed to the control of the Minister for Justice (and therefore accommodated in a correctional centre rather than a children's detention centre). There is no change to the power to impose a control order in respect of persons under the age of 21 years. **Schedule 1 [26]** is a consequential amendment that provides that the period for which an offender is committed to the control of the Minister for Justice will be taken to be a sentence of imprisonment.

### **Penalties for offences**

**Schedule 1 [18] and [19]** make the provisions relating to the imposition of a good behaviour bond by the Children's Court more consistent with the sentencing options for adult offenders under sections 9, 10 and 12 of the *Crimes (Sentencing Procedure) Act 1999*. Under sections 9, 10 and 12 of the *Crimes (Sentencing Procedure) Act 1999* a good behaviour bond may be imposed on a person when an offender is

discharged (following a guilty finding when no conviction is entered), or as an alternative to a sentence of imprisonment or if a decision is made to suspend a sentence of imprisonment. The amendments make it clear that the Children's Court has similar powers to impose a good behaviour bond, namely, when it discharges the offender, or as an alternative to a control order or if a decision is made to suspend a control order. **Schedule 1 [14], [23], [38], [39], [43], [44] and [46]** are consequential amendments.

**Schedule 1 [20]** enables the Children's Court to impose a fine on a child in addition to making an order releasing the child on probation (at present these are alternative penalties).

**Schedule 1 [21]** enables the Children's Court to release a person on probation and impose a community service order on the person (at present these are alternative penalties). **Schedule 1 [27], [40] and [41]** are consequential amendments. **Schedule 3.1 [2]** includes an amendment to the *Children (Criminal Proceedings) Regulation 2005* to allow the probation order to include a condition requiring compliance with the community service order.

**Schedule 1 [24]** requires the Children's Court, before it makes an order imposing a fine on a child, 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.

In relation to contraventions of road transport legislation, the Children's Court has the same power as other courts to impose any licence disqualification on a person whom it has found guilty of an offence. Under road transport legislation, some disqualifications may be imposed only if a person has been convicted of an offence. **Schedule 1 [29]** will enable the Children's Court to impose any such disqualification on a person whom it has found guilty of an offence (in the absence of a conviction). **Schedule 1 [4], [5] and [28]** are related amendments.

The amendments will also apply to any court exercising the powers of the Children's Court under the Principal Act.

### **Maximum amount of compensation that may be awarded**

At present, the Principal Act allows the Children's Court to direct an offender to pay compensation to a victim of crime, up to a maximum amount of \$1,000. **Schedule 1 [42]** increases this maximum to 10 penalty units (currently \$1,100) in the case of an offender who is under the age of 16 years at the time the compensation is ordered or 20 penalty units (currently \$2,200) in any other case.

### **Consecutive and concurrent control orders**

At present, the Children's Court can make an order requiring a person who commits an offence to be detained for a period of up to 2 years. If the person subject to the control order commits an offence while in custody, the Children's Court may make another control order (which is either partly concurrent or is consecutive), as long as

the total period of detention does not exceed 3 years. However, no more than 2 control orders can be made with respect to the person at any one time. **Schedule 1 [30]–[34]** remove this restriction, so that any number of consecutive or concurrent control orders can be made, provided that the total period for which the person is detained under those orders does not exceed 3 years.

**Schedule 1 [35]** is a related amendment to make it clear that the provisions that apply Parts 3 and 4 of the *Crimes (Sentencing Procedure) Act 1999* to the Children's Court are subject to anything to the contrary in the Principal Act. For instance, the maximum detention period in respect of concurrent or consecutive control orders in respect of juvenile offenders is 3 years, which is a departure from the 5 year limitation provided for by section 58 of the *Crimes (Sentencing Procedure) Act 1999*.

### Other amendments

At present, if a child is taken into custody in connection with criminal proceedings, and has not been released on bail, the Principal Act requires the child to be brought before the Children's Court or an authorised justice for the making of a bail determination by the next working day. **Schedule 1 [9]** repeals this requirement, which is uncommenced. However, a more general requirement, that the child must be brought before the Children's Court as soon as practicable, will be commenced by the amendments (see **Schedule 1 [1]**).

**Schedule 1 [17]** enables the Children's Court to have regard to a background report in relation to a person before making a decision as to whether proceedings should be dealt with on indictment rather than summarily.

**Schedule 1 [25]** removes the requirement that the Children's Court set a non-parole period at the time of imposing a control order, if the control order is suspended on condition that the person enter into a good behaviour bond. Instead, the Children's Court will be required to set a non-parole period if the person later contravenes the good behaviour bond and the Court decides to revoke the good behaviour bond (see **Schedule 1 [45]**). These changes are consistent with changes made to the *Crimes (Sentencing Procedure) Act 1999* by the *Crimes and Courts Legislation Amendment Act 2006*. **Schedule 1 [36]** is a consequential amendment.

**Schedule 1 [37]** makes it clear that the provisions of the *Crimes (Sentencing Procedure) Act 1999* relating to the use of victim impact statements apply to the Children's Court (in the same way as they apply to similar offences when dealt with by a Local Court).

**Schedule 1 [6]** updates the definition of *traffic offence* in the Principal Act, so that it includes offences under the *Motor Accidents Compensation Act 1999* and so that reference to a repealed Act is removed.

**Schedule 1 [47]** enables savings and transitional regulations to be made as a consequence of the proposed Act.

**Schedule 1 [48]** provides for the application of the amendments.

## **Schedule 2      Amendment of other Acts**

### **Community service orders**

**Schedule 2.1** amends the *Children (Community Service Orders) Act 1987* so that participation in any personal development, educational or other program approved, or of a class or description approved, by the Minister may be counted as community service work for the purposes of compliance with a community service order. A court that makes a community service order may recommend that the community service work include participation in any such development, educational or other program.

### **Penalties for traffic offences**

**Schedule 2.2** amends the *Criminal Procedure Act 1986* to enable a Local Court to impose any penalty that the Children's Court could impose in respect of a child found guilty of an offence against the *Motor Accidents Compensation Act 1999*.

## **Schedule 3      Consequential amendments to other legislation**

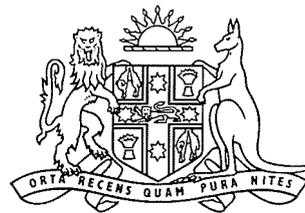
**Schedule 3.1, 3.2 and 3.4** amend the following legislation as a consequence of the changes made by Schedule 1 in relation to the types of penalties that may be ordered by the Children's Court:

- (a) *Children (Criminal Proceedings) Regulation 2005*,
- (b) *Children (Interstate Transfer of Offenders) Act 1988*,
- (c) *Victims Support and Rehabilitation Act 1996*.

The amendments principally update cross-references to the Principal Act.

**Schedule 3.3** amends the *Crimes (Administration of Sentences) Act 1999* as a consequence of the amendments proposed to be made by Schedule 1 [22] under which offenders of or above the age of 21 years on whom control orders are imposed by the Children's Court, or by any other court exercising the jurisdiction of the Children's Court, are to be detained in correctional centres rather than children's detention centres.





New South Wales

# Children (Criminal Proceedings) Amendment Bill 2008

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New South Wales

# Children (Criminal Proceedings) Amendment Bill 2008

No. , 2008

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## A Bill for

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Children (Criminal Proceedings) Amendment Act 2008</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) Section 6 commences on the date of assent to this Act.	7
<b>3 Amendment of Children (Criminal Proceedings) Act 1987 No 55</b>	8
The <i>Children (Criminal Proceedings) Act 1987</i> is amended as set out in Schedule 1.	9 10
<b>4 Amendment of other Acts</b>	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13
<b>5 Consequential amendments to other legislation</b>	14
The Acts and Regulation specified in Schedule 3 are amended as set out in that Schedule.	15 16
<b>6 Repeal of Crimes Amendment (Detention after Arrest) Act 1997 No 48</b>	17
The <i>Crimes Amendment (Detention after Arrest) Act 1997</i> is repealed.	18
<b>7 Repeal of Act</b>	19
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	20 21
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	22 23

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<b>Schedule 1</b>	<b>Amendment of Children (Criminal Proceedings) Act 1987</b>	1
		2
	(Section 3)	3
<b>[1] Section 2 Commencement</b>		4
Insert after section 2 (1):		5
(1A) Section 9 commences on the date that section 9 (2) is repealed by the <i>Children (Criminal Proceedings) Amendment Act 2008</i> .		6
		7
<b>[2] Section 3 Definitions</b>		8
Omit the definition of <i>parent</i> from section 3 (1). Insert instead:		9
<i>parental responsibility</i> , in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.		10
		11
		12
<b>[3] Section 3 (1), definition of “person responsible”</b>		13
Omit the definition. Insert instead.		14
<i>person responsible</i> , in relation to a child, means:		15
(a) a person having parental responsibility for the child, or		16
(b) a person who has the care of the child (whether or not the person has parental responsibility for the child).		17
		18
<b>[4] Section 3 (1)</b>		19
Insert in alphabetical order:		20
<i>road transport legislation</i> has the same meaning as it has in the <i>Road Transport (General) Act 2005</i> .		21
		22
<b>[5] Section 3 (1), definition of “traffic offence”</b>		23
Omit “within the meaning of the <i>Road Transport (General) Act 2005</i> ” from paragraph (a).		24
		25
<b>[6] Section 3 (1), definition of “traffic offence”</b>		26
Omit paragraph (c). Insert instead:		27
(c) the <i>Motor Accidents Compensation Act 1999</i> , or		28

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<b>[7] Section 6 Principles relating to exercise of functions under Act</b>	1
Omit “A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles”.	2 3
Insert instead “A person or body that has functions under this Act is to exercise those functions having regard to the following principles”.	4 5
<b>[8] Section 6 (f)–(h)</b>	6
Insert after section 6 (e):	7
(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,	8 9 10
(g) that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions,	11 12 13
(h) that, subject to the other principles described above, consideration should be given to the effect of any crime on the victim.	14 15 16
<b>[9] Section 9 Expedition where child in custody</b>	17
Omit section 9 (2).	18
<b>[10] Section 10 Exclusion of general public from criminal proceedings</b>	19
Omit paragraphs (c) and (d) of the definition of <i>member of the immediate family</i> in section 10 (4).	20 21
Insert instead:	22
(c) a parent or step-parent of the victim, or person having parental responsibility for the victim, or	23 24
(d) a child or step-child of the victim, or some other child for whom the victim has parental responsibility, or	25 26
<b>[11] Section 12 Proceedings to be explained to children</b>	27
Omit section 12 (1)–(2A). Insert instead:	28
(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.	29 30 31 32
<b>[12] Section 13 Admissibility of certain statements etc</b>	33
Omit “16 years” from section 13 (1) (a) (iii). Insert instead “14 years”.	34

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<b>[13] Section 13 (2) (c)</b>	1
Insert at the end of section 13 (2) (b):	2
, and	3
(c) a reference to a person responsible for a child does not	4
include a member of the police force (unless he or she has	5
parental responsibility for the child).	6
<b>[14] Section 18 Other indictable offences</b>	7
Omit section 18 (3). Insert instead:	8
(3) If a court, in exercising the functions of the Children’s Court	9
under subsection (2), makes an order under section 33 that	10
provides for a person to enter into a good behaviour bond or that	11
releases a person on probation, the court may, on referral from the	12
Children’s Court under section 40 (1A), deal with the order in the	13
same way as the Children’s Court may deal with it under	14
section 40.	15
<b>[15] Section 19 Court may direct imprisonment to be served as a juvenile offender</b>	16
Insert after section 19 (1):	17
(1A) In the case of a person of or above the age of 18 years who is	19
serving, or has previously served, the whole or any part of a term	20
of imprisonment in a correctional centre, such an order may not	21
be made unless the court decides that there are special	22
circumstances justifying detention of the person as a juvenile	23
offender.	24
<b>[16] Section 19 (4)–(4B)</b>	25
Omit section 19 (4). Insert instead:	26
(4) A finding of special circumstances for the purposes of subsection	27
(1A) or (3) may be made on one or more of the following	28
grounds, and not otherwise:	29
(a) that the person is vulnerable on account of illness or	30
disability (within the meaning of the <i>Anti-Discrimination</i>	31
<i>Act 1977</i> ),	32
(b) that the only available educational, vocational training or	33
therapeutic programs that are suitable to the person’s needs	34
are those available in detention centres,	35
(c) that, if the person were committed to a correctional centre,	36
there would be an unacceptable risk of the person suffering	37
physical or psychological harm, whether due to the nature	38

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	of the person’s offence, any assistance given by the person in the prosecution of other persons or otherwise.	1 2
(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.	3 4 5 6
(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.	7 8 9
<b>[17]</b>	<b>Section 31 Hearing of charges in the Children’s Court</b>	10
	Insert “(including any background report of a kind referred to in section 25)” after “evidence before it” in section 31 (5) (c).	11 12
<b>[18]</b>	<b>Section 33 Penalties</b>	13
	Omit section 33 (1) (a). Insert instead:	14
	(a) it may make an order:	15
	(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	16 17 18
	(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,	19 20 21
<b>[19]</b>	<b>Section 33 (1) (b)</b>	22
	Omit the paragraph. Insert instead:	23
	(b) it may make an order directing the person to enter into a good behaviour bond for a specified period, not exceeding 2 years,	24 25 26
<b>[20]</b>	<b>Section 33 (1) (e1)</b>	27
	Insert after section 33 (1) (e):	28
	(e1) it may do both the things referred to in paragraphs (c) and (e),	29 30
<b>[21]</b>	<b>Section 33 (1) (f1)</b>	31
	Insert after section 33 (1) (f):	32
	(f1) it may do both of the things referred to in paragraphs (e) and (f),	33 34

<b>[22] Section 33 (1) (g)</b>	1
Omit the paragraph. Insert instead:	2
(g) it may, subject to the provisions of the <i>Crimes (Sentencing Procedure) Act 1999</i> , make an order committing the person for such period of time (not exceeding 2 years) as it thinks fit:	3
	4
	5
	6
(i) in the case of a person who is under the age of 21 years, to the control of the Minister administering the <i>Children (Detention Centres) Act 1987</i> , or	7
	8
	9
	10
(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 <i>Crimes (Administration of Sentences) Act 1999</i> .	11
	12
	13
<b>[23] Section 33 (1A)</b>	14
Omit “referred to in subsection (1) (b)”.	15
Insert instead “imposed under this section”.	16
<b>[24] Section 33 (1AA)</b>	17
Insert after section 33 (1A):	18
(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:	19
	20
	21
(a) the child’s ability to pay the fine,	22
(b) the potential impact of the fine on the rehabilitation of the child.	23
	24
<b>[25] Section 33 (1B)</b>	25
Omit “except to the extent to which it deals with setting the non-parole period and the balance of the term of the order”.	26
	27
<b>[26] Section 33 (1C)</b>	28
Insert after section 33 (1B):	29
(1C) If the Children’s Court makes an order under subsection (1) (g)	30
(ii) committing a person to the control of the Minister administering the <i>Crimes (Administration of Sentences) Act 1999</i> , the period for which the person is committed is taken to be a sentence of imprisonment for the purposes of that Act.	31
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	33
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<b>[27] Section 33 (2)</b>	1
Omit “(f)”. Insert instead “(f1)”.	2
<b>[28] Section 33 (5) (a)</b>	3
Omit “within the meaning of the <i>Road Transport (General) Act 2005</i> ”.	4
<b>[29] Section 33 (6)</b>	5
Insert after section 33 (5):	6
(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, the Children’s Court may exercise any such power with respect to any person it finds guilty of an offence.	7 8 9 10 11 12
<b>Note.</b> 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.	13 14 15
<b>[30] Section 33A Cumulative or concurrent orders etc</b>	16
Insert “or other control orders” after “another control order” in section 33A (3).	17 18
<b>[31] Section 33A (4)</b>	19
Omit the subsection. Insert instead:	20
(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).	21 22 23 24 25
<b>[32] Section 33AA Cumulative or concurrent orders—assault on juvenile justice officers</b>	26 27
Omit “another control order (the <i>existing control order</i> )” from section 33AA (2) (b).	28 29
Insert instead “one or more other control orders (an <i>existing control order</i> )”.	30
<b>[33] Section 33AA (3)</b>	31
Insert “or, if there is more than one, the last of them” after “an existing control order”.	32 33

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<b>[34] Section 33AA (5)</b>	1
Omit the subsection. Insert instead:	2
(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).	3 4 5 6 7
<b>[35] Section 33C Application of Crimes (Sentencing Procedure) Act 1999 to children</b>	8 9
Omit “The provisions”. Insert instead “Subject to this Act, the provisions”.	10
<b>[36] Section 33C (d)</b>	11
Insert at the end of section 33C (c):	12
, and	13
(d) a reference in those provisions to a good behaviour bond were a reference to a good behaviour bond imposed under section 33.	14 15 16
<b>[37] Section 33C (2)</b>	17
Insert at the end of section 33C:	18
(2) To avoid doubt, Division 2 of Part 3 of the <i>Crimes (Sentencing Procedure) Act 1999</i> (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.	19 20 21 22 23
<b>[38] Section 33D Non-association and place restriction orders</b>	24
Omit “section 33 (1) (paragraphs (a),” from section 33D (2).	25
Insert instead “section 33 (subsection (1) (a) (i),”.	26
<b>[39] Section 33D (5)</b>	27
Omit “referred to in section 33 (1) (b) or (e)”.	28
Insert instead “under section 33 providing for a person to enter into a good behaviour bond or releasing a person on probation”.	29 30
<b>[40] Section 34 Restrictions on the imposition of control orders etc</b>	31
Insert “, (f1)” after “(f)” in section 34 (1).	32

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<b>[41] Section 35 Reasons for decision to be given</b>	1
Omit “(f)” from section 35 (b). Insert instead “(f1)”.	2
<b>[42] Section 36 Compensation</b>	3
Omit section 36 (3). Insert instead:	4
(3) The maximum amount of compensation that may be awarded is:	5
(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	6
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(b) the amount that is equivalent to 20 penalty units (in any other case).	9
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<b>[43] Section 38 Destruction of photographs, finger-prints etc</b>	11
Omit section 38 (1) and (2). Insert instead:	12
(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.	13
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(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.	20
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<b>[44] Section 40 Variation of good behaviour bond or probation</b>	28
Omit “referred to in section 33 (1) (b) or (e)” from section 40 (1) and (2), wherever occurring.	29
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Insert instead “under section 33 that provides for a person to enter into a good behaviour bond or that releases a person on probation”.	31
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<b>[45] Section 41A Provisions applicable where control order suspended subject to good behaviour bond</b>	33
	34
Omit section 41A (3) (b) and (c). Insert instead:	35
(b) Part 4 of the <i>Crimes (Sentencing Procedure) Act 1999</i> applies to the order under section 33 (1) (g), as if the order	36
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	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.	1 2 3 4
<b>[46]</b>	<b>Section 51 Regulations</b>	5
	Omit “under section 33 (1) (b) and (e)” from section 51 (1) (a).	6
	Insert instead “under section 33 that provide for a person to enter into a good behaviour bond or release a person on probation”.	7 8
<b>[47]</b>	<b>Schedule 2 Savings and transitional provisions</b>	9
	Insert at the end of clause 1 (1):	10
	<i>Children (Criminal Proceedings) Amendment Act 2008</i>	11
<b>[48]</b>	<b>Schedule 2, Part 14</b>	12
	Insert after Part 13:	13
	<b>Part 14 Children (Criminal Proceedings) Amendment Act 2008</b>	14 15
	<b>19 Definition</b>	16
	In this Part:	17
	<i>amending Act</i> means the <i>Children (Criminal Proceedings) Amendment Act 2008</i> .	18 19
	<b>20 Detention of adults in juvenile detention centres</b>	20
	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 22 23
	<b>21 Changes to penalty provisions</b>	24
	(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.	25 26 27 28
	(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).	29 30 31 32 33 34

Children (Criminal Proceedings) Amendment Bill 2008

Schedule 1      Amendment of Children (Criminal Proceedings) Act 1987

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(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.	1 2 3
(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.	4 5 6 7 8 9
<b>22</b>	<b>Change to maximum amount of compensation</b>	10
	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.	11 12 13

<b>Schedule 2</b>	<b>Amendment of other Acts</b>	1
	(Section 4)	2
<b>2.1</b>	<b>Children (Community Service Orders) Act 1987 No 56</b>	3
<b>[1]</b>	<b>Section 3 Definitions</b>	4
	Omit the definitions of <i>community service work</i> and <i>work</i> from section 3 (1).	5
	Insert in alphabetical order:	6
	<i>community service work</i> 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.	7
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	<i>perform</i> community service work includes participate in any personal development, educational or other program that is community service work.	12
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<b>[2]</b>	<b>Section 5 Making of children’s community service orders</b>	15
	Insert after section 5 (1A):	16
	(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.	17
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<b>[3]</b>	<b>Section 13 Number of hours of community service work</b>	21
	Omit “hours of work” from section 13 (3) (a) and (b), (3A) and (5), wherever occurring.	22
		23
	Insert instead “hours of community service work”.	24
<b>[4]</b>	<b>Section 17 Obligations of persons subject to children’s community service orders</b>	25
		26
	Omit “work” from section 17 (1) (b) and (c) and (2), wherever occurring.	27
	Insert instead “community service work”.	28
<b>[5]</b>	<b>Section 17 (3)</b>	29
	Insert after section 17 (2):	30
	(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	31
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	section 5 (1B)) must, if practicable, include participation in a personal development, educational or other program.	1 2
<b>[6]</b>	<b>Section 18 Directions</b>	3
	Omit “work” from section 18 (1) and (1A) wherever occurring.	4
	Insert instead “community service work”.	5
<b>[7]</b>	<b>Section 18 (1B)</b>	6
	Insert after section 18 (1A):	7
	(1B) Subsection (1) does not apply in respect of participation in a personal development, educational or other program.	8 9
<b>[8]</b>	<b>Part 6, heading</b>	10
	Omit “work incidents”. Insert instead “community service work”.	11
<b>[9]</b>	<b>Sections 26B, 26C (except heading), 26D (except heading) and 26F</b>	12
	Omit “work” wherever occurring. Insert instead “community service work”.	13
<b>[10]</b>	<b>Schedule 1 Savings and transitional provisions</b>	14
	Insert at the end of clause 1 (1):	15
	<i>Children (Criminal Proceedings) Amendment Act 2008</i> , to the extent that it amends this Act	16 17
<b>[11]</b>	<b>Schedule 1, clause 4</b>	18
	Insert after clause 3:	19
	<b>4 Provisions consequent on enactment of Children (Criminal Proceedings) Amendment Act 2008</b>	20 21
	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 <i>work</i> by the <i>Children (Criminal Proceedings) Amendment Act 2008</i> is taken, on that repeal, to be an approval in respect of community service work.	22 23 24 25 26
<b>2.2</b>	<b>Criminal Procedure Act 1986 No 209</b>	27
	<b>Section 210 Penalties applying to traffic offences committed by children</b>	28
	Insert at the end of paragraph (d) of the definition of <i>traffic offence</i> in section 210 (4):	29 30
	or	31
	(e) the <i>Motor Accidents Compensation Act 1999</i> ,	32

<b>Schedule 3</b>	<b>Consequential amendments to other legislation</b>	1
		2
	(Section 5)	3
<b>3.1</b>	<b>Children (Criminal Proceedings) Regulation 2005</b>	4
<b>[1]</b>	<b>Clause 7 Conditions that may be imposed on certain orders</b>	5
	Omit “under section 33 (1) (b) or (e) of the Act”.	6
	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”.	7
		8
<b>[2]</b>	<b>Clause 7 (2)</b>	9
	Insert at the end of clause 7:	10
	(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.	11
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<b>3.2</b>	<b>Children (Interstate Transfer of Offenders) Act 1988 No 85</b>	17
	<b>Section 3 Definitions</b>	18
	Omit “order under section 33 (1) (b), (e) or (f)” from paragraph (b) (ii) of the definition of <i>young offender</i> .	19
		20
	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”.	21
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		23
<b>3.3</b>	<b>Crimes (Administration of Sentences) Act 1999 No 93</b>	24
<b>[1]</b>	<b>Section 4 Application of Part</b>	25
	Insert after section 4 (1) (d):	26
	(d1) any person the subject of an order under section 33 (1) (g) of the <i>Children (Criminal Proceedings) Act 1987</i> by which the Children’s Court has committed the person to the control of the Minister administering this Act, and	27
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<b>[2] Section 4 (1) (e)</b>	1
Omit “referred to in paragraph (a), (b), (c) or (d)”.	2
Insert instead “referred to above”.	3
<b>3.4 Victims Support and Rehabilitation Act 1996 No 115</b>	4
<b>Dictionary</b>	5
Omit paragraph (b) of the definition of <i>conviction</i> .	6
Insert instead:	7
(b) (except in Part 4) an order made under section 33 of the <i>Children (Criminal Proceedings) Act 1987</i> (other than section 33 (1) (a) (i)).	8 9 10