

Children (Criminal Proceedings) Act 1987 No 55

[1987-55]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**

[Crimes Amendment \(Detention after Arrest\) Act 1997 No 48](#) (not commenced — to commence on the commencement of sec 9 of this Act)

[Justice Legislation Amendment \(Non-association and Place Restriction\) Act 2001 No 100](#) (not commenced)

[Criminal Legislation Amendment Act 2001 No 117](#) (not commenced)

[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)

[Children \(Criminal Proceedings\) Amendment \(Adult Detainees\) Act 2001 No 123](#) (not commenced)

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Children (Criminal Proceedings) Act 1987 No 55



New South Wales

An Act with respect to the conduct of criminal proceedings against children and other young persons.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Children (Criminal Proceedings) Act 1987*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

adult means a person who is of or above the age of 18 years.

attendance notice has the same meaning as it has in the *Justices Act 1902*.

authorised justice means:

- (a) a Magistrate, or
- (b) a justice employed in the Local Courts Administration, Attorney General's Department.

child means a person who is under the age of 18 years.

Children's Court means the Children's Court of New South Wales constituted by the *Children's Court Act 1987*.

court includes justice (whether or not the justice is a Children's Magistrate or a

Magistrate).

detention centre has the same meaning as it has in the *Children (Detention Centres) Act 1987*.

parent, in relation to a child, includes:

- (a) a guardian of the child, and
- (b) a person who has the lawful custody of the child,

but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child.

person responsible, in relation to a child, means:

- (a) a parent of the child, or
- (b) a person who has the care of the child (whether or not the person has the custody of the child).

regulation means a regulation made under this Act.

serious children's indictable offence means:

- (a) homicide,
- (b) an offence punishable by imprisonment for life or for 25 years,
- (c) an offence arising under section 61J (otherwise than in circumstances referred to in subsection (2) (d) of that section) or 61K of the *Crimes Act 1900* (or under section 61B of that Act before the commencement of Schedule 1 (2) to the *Crimes (Amendment) Act 1989*),
- (d) the offence of attempting to commit an offence arising under section 61J (otherwise than in circumstances referred to in subsection (2) (d) of that section) or 61K of the *Crimes Act 1900* (or under section 61B of that Act before the commencement of Schedule 1 (2) to the *Crimes (Amendment) Act 1989*), or
- (e) an indictable offence prescribed by the regulations as a serious children's indictable offence for the purposes of this Act.

traffic offence means an offence arising under a provision of:

- (a) the road transport legislation within the meaning of the *Road Transport (General) Act 1999*,
- (b) the *Roads Act 1993*,
- (c) the *Transport Act 1930*,

(d) the *Motor Vehicles (Third Party Insurance) Act 1942*, or

(e) the *Recreation Vehicles Act 1983*,

in respect of the use, standing or parking of a motor vehicle within the meaning of that provision.

(2) (Repealed)

(3) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty, and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Part 2 Criminal proceedings generally

Division 1 Preliminary

4 Application

This Part applies to:

(a) any court that exercises criminal jurisdiction, and

(b) any criminal proceedings before any such court,

notwithstanding any law or practice to the contrary.

5 Age of criminal responsibility

It shall be conclusively presumed that no child who is under the age of 10 years can be guilty of an offence.

6 Principles relating to the exercise of criminal jurisdiction

A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles:

(a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them,

(b) that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance,

(c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption,

- (d) that it is desirable, wherever possible, to allow a child to reside in his or her own home,
- (e) that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind.

7 Jurisdiction of Children's Court not to be exercised by certain other courts

- (1) Except as provided by this Act, neither a Local Court nor a justice or justices may hear and determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.
- (2) The Drug Court may not hear or determine criminal proceedings that a Children's Court has jurisdiction to hear and determine.

7A Courts may rely on apparent age of defendants

- (1) For the purpose of enabling a court to determine whether or not it has jurisdiction to hear and determine criminal proceedings against a person in circumstances in which the court's jurisdiction depends on the person's age, the court may, if it is satisfied that no other evidence of the person's age is readily available, rely on the apparent age of the person.
- (2) Nothing in this section limits the operation of Part 4.

Division 2 Commencement of proceedings

8 Commencement of proceedings by summons etc

- (1) Criminal proceedings should not be commenced against a child otherwise than by way of summons or attendance notice.
- (2) Subsection (1) does not apply:
 - (a) if the offence for which proceedings are being commenced consists of:
 - (i) a serious children's indictable offence,
 - (ii) an indictable offence under Division 2 of Part 2 of the *Drug Misuse and Trafficking Act 1985*, or
 - (iii) an offence (whether indictable or otherwise) prescribed by the regulations for the purposes of this paragraph,
 - (b) if, in the opinion of the person by whom the proceedings are commenced, there are reasonable grounds for believing that:
 - (i) the child is unlikely to comply with a summons or attendance notice, or
 - (ii) the child is likely to commit further offences,

- if the proceedings were to be commenced by summons or attendance notice, or
- (c) if, in the opinion of the person by whom the proceedings are commenced:
- (i) the violent behaviour of the child, or
 - (ii) the violent nature of the offence,
- indicates that the child should not be allowed to remain at liberty.

- (3) If a child fails to comply with an attendance notice, the child's attendance at the proceedings to which the notice relates should, unless there are exceptional circumstances, be enforced by way of summons rather than by way of warrant.

9 Expedition where child in custody

- (1) If criminal proceedings are to be commenced against a child otherwise than by way of summons or attendance notice, and the child is not released on bail under the [Bail Act 1978](#), the child shall be brought before the Children's Court as soon as practicable.
- (2) Without limiting the generality of subsection (1), a child who is not released on bail under the [Bail Act 1978](#) shall, for the purpose of making a further determination of bail, be brought before an authorised justice:
- (a) no later than the next day, or
 - (b) if the next day is a Saturday, Sunday or public holiday—no later than the next day that is not a Saturday, Sunday or public holiday,
- if, within that time, the child has not been brought before the Children's Court.

9A (Repealed)

Division 3 Hearings

10 Exclusion of general public from criminal proceedings

- (1) While a court is hearing criminal proceedings to which a child is a party:
- (a) any person (other than a person referred to in paragraph (b) or (c)) who is not directly interested in the proceedings is to be, unless the court otherwise directs, excluded from the place where the proceedings are being heard, and
 - (b) any person who is engaged in preparing a report on the proceedings for dissemination through a public news medium is, unless the court otherwise directs, entitled to enter or remain in the place where the proceedings are being heard, and
 - (c) any family victim is entitled to enter or remain in the place where the proceedings are being heard.

- (2) While a court is hearing criminal proceedings to which a child is a party, the court may direct any person (other than the child or any other person who is directly interested in the proceedings or a family victim) to leave the place where the proceedings are being heard during the examination of any witness if the court is of the opinion that it is in the interests of the child that such a direction should be given.
- (3) A reference in subsection (1) or (2) to criminal proceedings does not include a reference to proceedings held before a court other than the Children's Court in respect of a traffic offence.

(4) In this section:

deceased victim, in relation to an offence, means a person against whom the offence was committed and who has died as a direct result of the offence.

family victim, in relation to a criminal proceeding for an offence, means a person who, at the time the offence was committed, was a member of the immediate family of a deceased victim of the offence (whether or not the person suffered personal harm as a result of the offence).

member of the immediate family of a deceased victim means:

- (a) the victim's spouse, or
- (b) the victim's de facto spouse, or partner of the same sex, who has cohabited with the victim for at least 2 years, or
- (c) a parent, guardian, or step-parent of the victim, or
- (d) a child or step-child of the victim or some other child for whom the victim is the guardian, or
- (e) a brother, sister, step-brother or step-sister of the victim.

11 Publication and broadcasting of names

(1) The name of any child:

- (a) who appears as a witness before a court in any criminal proceedings,
- (b) to whom any criminal proceedings relate, or
- (c) who is mentioned or otherwise involved in any criminal proceedings,

shall not be published or broadcast, whether before or after the proceedings are disposed of.

(2) A reference in subsection (1) to criminal proceedings does not include a reference to proceedings held before a court other than the Children's Court in respect of a traffic

offence.

- (3) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

- (4) Subsection (1) does not prohibit:

- (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1), or
- (b) the publication or broadcasting of the name of a child:
- (i) in the case of a child who is under the age of 16 years at the time of publication or broadcasting—with the consent of the court concerned, or
 - (ii) in the case of a child who is of or above the age of 16 years at the time of publication or broadcasting—with the consent of the child, or
- (c) the publication or broadcasting of the name of a child who has been convicted of a serious children's indictable offence, if the publication or broadcasting is authorised by a court under subsection (4B).

- (4A) The consent of the court referred to in subsection (4) (b) (i) shall not be given except with the concurrence of the child or (if the child is incapable of giving concurrence) where the court is of the opinion that the public interest so requires.

- (4B) A court that sentences a child on conviction for a serious children's indictable offence may, by order made at the time of sentencing, authorise the publication or broadcasting of the name of the child (whether or not the child consents or concurs).

- (4C) A court is not to make an order referred to in subsection (4B) unless it is satisfied:

- (a) that the making of such an order is in the interests of justice, and
- (b) that the prejudice to the child arising from the publication or broadcasting of the child's name in accordance with such an order does not outweigh those interests.

- (4D) The burden of establishing the matters referred to in subsection (4C) (a) and (b) lies on the prosecuting authority.

- (4E) A court that makes an order referred to in subsection (4B) must indicate to the child, and make a record of, its reasons for doing so.

- (5) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is

likely to lead to the identification of the child.

- (6) For the purposes of this section, a reference to a child who appears as a witness before a court in any criminal proceedings includes a reference to a child who gives evidence in the form of a recording in proceedings in accordance with Part 3 of the *Evidence (Children) Act 1997*.

12 Proceedings to be explained to children

- (1) If criminal proceedings are brought against a child, the following matters shall be explained to the child:

- (a) the nature of any allegations made against the child, and
- (b) the facts that must be established before the child can be found guilty of the offence with which the child is charged.

- (2) Until those matters have been explained to the child, the court before which the proceedings are brought shall not proceed further.

(2A) If:

- (a) the child fails, apparently without reasonable excuse, to appear when the criminal proceedings are before the court, and
- (b) those matters have not been explained to the child,

subsection (2) does not, during the child's absence, prevent the court from proceeding further.

- (3) The Children's Court shall, if requested by the child or by some other person on behalf of the child, explain to the child:

- (a) any aspect of the procedure of the Children's Court, and
- (b) any decision or ruling made by the Children's Court,

in or in relation to the proceedings.

- (4) A court shall give the child the fullest opportunity practicable to be heard, and to participate, in the proceedings.

12A Bail applications

Sections 10 and 11 apply to a child who appears or is brought before a court in relation to a bail application in the same way as the sections apply to a child appearing or brought before a court in any criminal proceeding.

13 Admissibility of certain statements etc

- (1) Any statement, confession, admission or information made or given to a member of the police force by a child who is a party to criminal proceedings shall not be admitted in evidence in those proceedings unless:
 - (a) there was present at the place where, and throughout the period of time during which, it was made or given:
 - (i) a person responsible for the child,
 - (ii) an adult (other than a member of the police force) who was present with the consent of the person responsible for the child,
 - (iii) in the case of a child who is of or above the age of 16 years—an adult (other than a member of the police force) who was present with the consent of the child, or
 - (iv) a barrister or solicitor of the child's own choosing, or
 - (b) the person acting judicially in those proceedings:
 - (i) is satisfied that there was proper and sufficient reason for the absence of such an adult from the place where, or throughout the period of time during which, the statement, confession, admission or information was made or given, and
 - (ii) considers that, in the particular circumstances of the case, the statement, confession, admission or information should be admitted in evidence in those proceedings.
- (2) In this section:
 - (a) a reference to a person acting judicially includes a reference to a person making a determination as to the admissibility of evidence in committal proceedings, and
 - (b) a reference to criminal proceedings is a reference to any criminal proceedings in which a person is alleged to have committed an offence while a child or which arise out of any other criminal proceedings in which a person is alleged to have committed an offence while a child.
- (3) Nothing in this section limits or affects the admissibility in evidence in any criminal proceedings against a child of any statement or information that the child is required to make or give by virtue of the provisions of any Act or law.

14 Recording of conviction

- (1) Without limiting any other power of a court to deal with a child who has pleaded guilty to, or has been found guilty of, an offence, a court:

- (a) shall not, in respect of any offence, proceed to, or record such a finding as, a conviction in relation to a child who is under the age of 16 years, and
 - (b) may, in respect of an offence which is disposed of summarily, refuse to proceed to, or record such a finding as, a conviction in relation to a child who is of or above the age of 16 years.
- (2) Subsection (1) does not limit any power of a court to proceed to, or record such a finding as, a conviction in respect of a child who is charged with an indictable offence that is not disposed of summarily.

15 Evidence of prior offences and other matters not admissible in certain criminal proceedings

- (1) The fact that a person has pleaded guilty to an offence in, or has been found guilty of an offence by, a court (being an offence committed when the person was a child) shall not be admitted in evidence (whether as to guilt or the imposition of any penalty) in any criminal proceedings subsequently taken against the person in respect of any other offence if:
- (a) a conviction was not recorded against the person in respect of the firstmentioned offence, and
 - (b) the person has not, within the period of 2 years prior to the commencement of proceedings for the other offence, been subject to any judgment, sentence or order of a court whereby the person has been punished for any other offence.
- (2) Subsection (1) or (3) does not apply to any criminal proceedings before the Children's Court.
- (3) The fact that a person has been dealt with by a warning, caution or youth justice conference under the *Young Offenders Act 1997* (being in respect of an alleged offence committed when the person was a child) is not to be admitted in evidence (whether as to guilt or the imposition of any penalty) in any criminal proceedings subsequently taken against the person in respect of any other offence.

Division 4 Penalties

16 Application

This Division applies to a person:

- (a) who has pleaded guilty to an indictable offence in, or has been found guilty or convicted of an indictable offence by, a court other than the Children's Court,
- (b) who was a child when the offence was committed, and
- (c) who was under the age of 21 years when charged before the court with the offence.

17 Serious children's indictable offences

A person to whom this Division applies shall, in relation to a serious children's indictable offence, be dealt with according to law.

18 Other indictable offences

- (1) A person to whom this Division applies shall, in relation to an indictable offence other than a serious children's indictable offence, be dealt with:
 - (a) according to law, or
 - (b) in accordance with Division 4 of Part 3.
- (2) For the purpose of dealing with a person in accordance with Division 4 of Part 3, a court shall have and may exercise the functions of the Children's Court under that Division in the same way as if:
 - (a) the court were the Children's Court, and
 - (b) the offence were an offence to which that Division applies.
- (3) If a court, in exercising the functions of the Children's Court under subsection (2), makes:
 - (a) an order of recognizance under section 33 (1) (b) or (d), or
 - (b) an order of probation under section 33 (1) (e),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.

19 Court may direct imprisonment to be served in a detention centre

If a court sentences a person to whom this Division applies to a term of imprisonment in respect of an indictable offence, the court may, in respect of a person who is under the age of 21 years, make an order directing that the whole or any part of that term be served in a detention centre.

20 Remission of persons to the Children's Court for punishment

- (1) A court may remit a person to whom this Division applies to the Children's Court, in respect of any indictable offence other than a serious children's indictable offence, so as to enable the Children's Court to impose a penalty on the person with respect to the offence, but may do so only in respect of a person who is under the age of 21 years.
- (2) A court that remits a person under this section:
 - (a) may, subject to the [Bail Act 1978](#), commit the person to custody until the person

can appear or be brought before the Children's Court, and

(b) shall cause to be sent to the Registrar of the Children's Court a certificate that:

(i) sets out the nature of the offence, and

(ii) states that the person has been found guilty of the offence and is being remitted to the Children's Court under this section.

(3) The Children's Court may deal with a person who has been remitted to it in respect of an offence in any way in which it could have dealt with the person had the person been tried and found guilty of the offence by the Children's Court.

21 Rights of appeal where person remitted for sentence

(1) There is no right of appeal against an order of remittal under section 20.

(2) Section 20 does not affect any right of appeal that a person may have against any finding of guilt or conviction pursuant to which an order of remittal under that section has been made.

(3) A person who is dissatisfied with the order of the Children's Court in respect of an offence for which the person has been remitted to the Children's Court under section 20 may appeal against the order, under Part 5A of the *Justices Act 1902*, in the same way as if the person had been tried and found guilty of the offence by the Children's Court.

Division 5 General

22, 23 (Repealed)

24 Compensation

A court shall have regard to the child's means and income (if any), and the child's ability to comply with any requirement relating to the payment of compensation, when deciding:

(a) whether or not to require a child to pay any compensation, or

(b) the amount of any compensation required to be paid by a child.

25 Background reports

(1) This section applies to a person:

(a) who has pleaded guilty to an offence (other than contempt of court) in, or has been found guilty or convicted of an offence (other than contempt of court) by, a court,

(b) who was a child when the offence was committed, and

(c) who was under the age of 21 years when charged before the court with the offence.

(2) A court shall not sentence a person to whom this section applies to a term of imprisonment, or make an order under section 33 (1) (g) in respect of the person, in connection with an offence unless:

(a) a background report, prepared in accordance with the regulations, has been tendered in evidence with respect to the circumstances surrounding the commission of the offence, and

(b) copies of the report have been given to the child and any other person appearing in the proceedings, and

(c) the court has, subject to the rules of evidence, taken into account the matters contained in the report and any submissions made in relation to those matters by the persons referred to in paragraph (b).

Part 3 Criminal proceedings in the Children's Court

Division 1 Preliminary

26 Application

(1) This Part applies to:

(a) the Children's Court, and

(b) any criminal proceedings before the Children's Court,

notwithstanding any law or practice to the contrary.

(2) In the event of an inconsistency between this Part and Part 2, this Part shall prevail to the extent of the inconsistency.

27 Application of [Justices Act 1902](#) etc

(1) Subject to Part 2 and to the rules of the Children's Court, any Act or other law relating to the functions of Local Courts, Magistrates or justices or to criminal proceedings before them applies to:

(a) the Children's Court, and

(b) any criminal proceedings before the Children's Court.

(2) In particular (and subject to Part 2 and to the rules of the Children's Court), the [Justices Act 1902](#) applies to the Children's Court and any criminal proceedings before the Children's Court.

- (3) If this Part and any Act or other law applied by this section (other than the *Bail Act 1978*) are inconsistent, this Part shall prevail to the extent of the inconsistency.

28 Jurisdiction of the Children's Court

- (1) 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 children's indictable offence, and
 - (b) committal proceedings in respect of any indictable offence (including a serious children's indictable offence),
- if the offence is alleged to have been committed by a person:
- (c) who was a child when the offence was committed, and
 - (d) who was under the age of 21 years when charged before the Children's Court with the offence.
- (2) Notwithstanding subsection (1), the Children's Court does not have jurisdiction to hear or determine proceedings in respect of a traffic offence that is alleged to have been committed by a person unless:
- (a) the offence arose out of the same circumstances as another offence that is alleged to have been committed by the person and in respect of which the person is charged before the Children's Court, or
 - (b) the person was not, when the offence was allegedly committed, old enough to obtain a licence or permit under the *Road Transport (Driver Licensing) Act 1998* or any other applicable Act authorising the person to drive the motor vehicle to which the offence relates.

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

- (1) If a charge in respect of an offence (whether indictable or otherwise) is made jointly against:
- (a) a person in respect of whom the Children's Court has jurisdiction, and
 - (b) a person in respect of whom the Children's Court does not have jurisdiction,
- the Court:
- (c) may adjourn the hearing of the charge against the person in respect of whom it has jurisdiction until the charge against the other person has been heard and determined, or
 - (d) may continue the hearing of the charge against the person in respect of whom it has jurisdiction without any such adjournment.

- (1A) In deciding whether to continue the hearing of a charge against a person, the Children's Court shall have regard to the following particular matters:
- (a) whether or not the person wishes the hearing of the charge by the Court to continue,
 - (b) whether or not the person has been released on bail under the *Bail Act 1978*,
 - (c) the delay in the hearing of the charge that would be likely to result from an adjournment of the hearing,
 - (d) whether or not to continue hearing the charge is in the interests of justice, and any other matter that the Court considers relevant.
- (2) Without limiting the generality of subsection (1), if a charge in respect of an indictable offence (other than an offence punishable summarily with the consent of the accused) is made jointly against:
- (a) a person in respect of whom the Children's Court has jurisdiction, and
 - (b) a person in respect of whom the Children's Court would not, but for this subsection, have jurisdiction,
- the Children's Court may hear and determine committal proceedings in respect of the offence against both of those persons.
- (3) The Children's Court shall not hear and determine committal proceedings as referred to in subsection (2) unless:
- (a) the elder of the persons referred to in that subsection is less than 3 years older than the younger of those persons, and
 - (b) the Children's Court is of the opinion that the proceedings should be so heard and determined.
- (4) For the purpose of exercising its functions under subsection (2), the Children's Court:
- (a) shall have, and may exercise, the jurisdiction of a Magistrate, and
 - (b) shall not have, and may not exercise, the jurisdiction of the Children's Court, as regards the elder of the persons referred to in that subsection.

Division 2 Commencement of proceedings

30 Adjournments

The powers of the Children's Court to adjourn proceedings, and to grant bail under the *Bail Act 1978* pending the hearing of proceedings and during any adjournment of

proceedings, may be exercised by an authorised justice.

Division 3 Hearings

31 Hearing of charges in the Children's Court

(1) If a person is charged before the Children's Court with an offence (whether indictable or otherwise) other than a serious children's indictable offence, the proceedings for the offence shall be dealt with summarily.

(2) Notwithstanding subsection (1):

(a) if a person is charged before the Children's Court with an indictable offence (other than an offence that is punishable summarily without the consent of the accused), and

(b) if the person informs the Children's Court (at any time during, or at the close of, the case for the prosecution) that the person wishes to take his or her trial according to law,

the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 41 (subsections (1) and (1A) excepted) of the *Justices Act 1902* in the same way as if an information had been laid before the Children's Court in accordance with section 21 of that Act.

(3) Notwithstanding subsection (1):

(a) if a person is charged before the Children's Court with an indictable offence, and

(b) if the Children's Court states that it is of the opinion, after all the evidence for the prosecution has been taken:

(i) that, having regard to all the evidence before the Children's Court, the evidence is capable of satisfying a jury beyond reasonable doubt that the person has committed an indictable offence, and

(ii) that the charge may not properly be disposed of in a summary manner,

the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 41 (subsections (1) and (1A) excepted) of the *Justices Act 1902* in the same way as if an information had been laid before the Children's Court in accordance with section 21 of that Act and as if the Children's Court had formed the opinion referred to in section 41 (2) (b) of that Act.

(4) If, in the circumstances referred to in subsection (3), the Children's Court commits a person for trial, the Children's Court shall forthwith furnish to the person a statement of the reasons for its decision to commit the person for trial instead of dealing with the matter summarily.

(5) Notwithstanding subsection (1):

- (a) if a person is charged before the Children's Court with an indictable offence, and
- (b) if, at any stage of the proceedings, the person pleads guilty to the charge, and
- (c) if the Children's Court states that it is of the opinion that, having regard to all the evidence before it, the charge may not properly be disposed of in a summary manner,

the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 51A of the *Justices Act 1902* as if the offence were a serious children's indictable offence in respect of which the person had pleaded guilty as referred to in that section.

Division 4 Penalties

32 Application

This Division applies to any offence for which proceedings are being dealt with summarily or in respect of which a person has been remitted to the Children's Court under section 20.

33 Penalties

- (1) If the Children's Court finds a person guilty of an offence to which this Division applies, it shall do one of the following things:
- (a) it may make an order dismissing the charge, or it may make an order dismissing the charge and may administer a caution to the person,
 - (b) it may make an order releasing 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,
 - (c) it may make an order imposing on the person a fine, not exceeding:
 - (i) the maximum fine prescribed by law in respect of the offence, or
 - (ii) 10 penalty units,whichever is the lesser,
 - (c1) it may make an order releasing the person on condition that the person complies with an outcome plan determined at a conference held under the *Young Offenders Act 1997*,
 - (c2) it may make an order adjourning proceedings against the person to a specified date (being an adjournment for a maximum period of 12 months from the date of

the finding of guilt), and granting bail to the person in accordance with the *Bail Act 1978*:

- (i) for the purpose of assessing the person's capacity and prospects for rehabilitation, or
 - (ii) for the purpose of allowing the person to demonstrate that rehabilitation has taken place, or
 - (iii) for any other purpose the Children's Court considers appropriate in the circumstances,
- (d) it may do both of the things referred to in paragraphs (b) and (c),
- (e) it may make an order releasing the person on probation, on such conditions as it may determine, for such period of time, not exceeding 2 years, as it thinks fit,
- (f) it may, subject to the provisions of the *Children (Community Service Orders) Act 1987*, make an order under section 5 of that Act requiring the person to perform community service work,
- (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 to the control of the Minister administering the *Children (Detention Centres) Act 1987*.

(1A) A good behaviour bond referred to in subsection (1) (b):

- (a) must contain a condition to the effect that the person to whom the bond relates (the **person under bond**) will appear before the court if called on to do so at any time during the term of the bond, and
- (b) must contain a condition to the effect that, during the term of the bond, the person under bond:
 - (i) will be of good behaviour, and
 - (ii) will inform the Children's Court of any change in the person's residential address, and
- (c) may contain such other conditions as are specified in the order by which the bond is imposed, other than conditions requiring the person under bond:
 - (i) to perform community service work, or
 - (ii) to make any payment, whether in the nature of a fine, compensation or otherwise.

(1B) If the Children's Court deals with a person under subsection (1) (g), it may make an

order:

- (a) suspending the execution of its order under subsection (1) (g) for a specified period (not exceeding the term of that order), and
- (b) releasing the person on condition that the person enters into a good behaviour bond under subsection (1) (b) for such a specified period,

but only if the person is not subject to any other order under subsection (1) (g) or to any sentence of imprisonment. Part 4 of the *Crimes (Sentencing Procedure) Act 1999* does not apply to an order under subsection (1) (g) whose execution is suspended under this subsection except to the extent to which it deals with setting the term of the order.

- (2) The Children's Court shall not deal with a person under subsection (1) (g) unless it is satisfied that it would be wholly inappropriate to deal with the person under subsection (1) (a)-(f).
- (3) In deciding under which paragraph of subsection (1) it should deal with a person who is a child, the Children's Court shall not have regard to the question of whether the child is a child in need of care and protection under the *Children and Young Persons (Care and Protection) Act 1998*.
- (4) Notwithstanding any other Act or law to the contrary, the Children's Court shall not sentence a person to imprisonment.
- (4A) Subsection (4) is subject to section 28B of the *Children (Detention Centres) Act 1987* but is not subject to any other provision of that Act.
- (5) Nothing in this section limits or affects any power that the Children's Court may have apart from this section:
 - (a) to impose any disqualification under the road transport legislation within the meaning of the *Road Transport (General) Act 1999* on a person whom it has found guilty of an offence,
 - (b) to order the forfeiture of any property that relates to the commission of an offence of which it has found a person guilty, or
 - (c) to make an order for restitution of property under section 126 of the *Criminal Procedure Act 1986*.

33A Cumulative or concurrent orders etc

- (1) In this section, **control order** means an order referred to in section 33 (1) (g).
- (2) Unless a direction is given under this section, the period for which a person is required to be detained under a control order commences when the order takes effect.

- (3) If the Children's Court so directs, the period for which a person is required to be detained under a control order commences when the period for which the person is required to be detained under another control order expires.
- (4) The Children's Court must not make a control order or give a direction under this section if the order or direction would have the effect of requiring a person:
 - (a) to be subject at any time to control orders requiring the person to be detained for more than 3 years (taking into account any period for which the person has already been detained under a control order to which the person is still subject), or
 - (b) to be detained for more than 2 periods specified in different control orders, being periods that are not to any extent concurrent.

33B Guilty plea to be taken into account

- (1) In dealing with a person under section 33 for an offence to which this Division applies to which the person pleaded guilty, the Children's Court must take into account:
 - (a) the fact that the person pleaded guilty, and
 - (b) when the person pleaded guilty or indicated an intention to plead guilty, and may accordingly reduce any order that it would otherwise have made.
- (2) If the Children's Court does not, as a result of this section, reduce an order it makes in respect of a person who pleaded guilty to an offence, it must state that fact and its reasons for not reducing the order when making the order.
- (3) The failure of the Children's Court to comply with this section does not invalidate any order made under section 33 by the Children's Court.
- (4) This section applies to proceedings for an offence whether commenced before or after the commencement of this section.

33C Application of [Crimes \(Sentencing Procedure\) Act 1999](#) to children

The provisions of Parts 3 and 4 of the [Crimes \(Sentencing Procedure\) Act 1999](#) apply to the Children's Court in the same way as they apply to a Local Court, and so apply as if:

- (a) a reference in those provisions to the sentencing of an offender to imprisonment were a reference to the making of a control order, and
- (b) a reference in those provisions to a conviction were a reference to a finding of guilt.

34 Restrictions on the imposition of control orders etc

- (1) An order shall not be made under section 33 (1) (f) or (g) in respect of an offence unless the penalty provided by law in respect of the offence is imprisonment.

(2) (Repealed)

(3) An order shall not be made under section 33 (1) (g) whereby a person is committed to the control of the Minister administering the *Children (Detention Centres) Act 1987* for a specified period unless the maximum penalty provided by law in respect of the offence is imprisonment for a period no less than that so specified.

35 Reasons for decision to be given

When the Children's Court deals with a person under section 33 (1) (g), it shall record:

- (a) the reason for which it has dealt with the person under that paragraph, and
- (b) the reason for which it considered that it would have been wholly inappropriate to deal with the person under section 33 (1) (a)-(f).

36 Compensation

- (1) If the Children's Court makes an order under a paragraph of section 33 (1) it may, under section 71 or 77B of the *Victims Compensation Act 1996*, give a direction for the payment of compensation by the person.
- (2) In deciding whether or not to require a person to pay compensation, the Children's Court shall have regard to the person's means and income, if any.
- (3) The maximum amount of compensation that may be awarded is \$1,000.

37 Term of control order

- (1) An order under section 33 (1) (g) takes effect when it is made.
- (2) Notwithstanding subsection (1), if the Children's Court orders that a control order takes effect at a specified time, the order takes effect at the specified time.
- (3) An order under section 33 (1) (g) ceases to have effect at the end of the period specified in the order, subject to section 32 of the *Children (Detention Centres) Act 1987*.

38 Destruction of photographs, finger-prints etc

- (1) When, in relation to an offence to which this Division applies, the Children's Court:
 - (a) finds a person not guilty of the offence, or
 - (b) exercises, in respect of a person, the power conferred on it by section 33 (1) (a),the Children's Court shall order that any photographs, finger-prints and palm-prints, and any other prescribed records (other than records of the Children's Court), relating to the offence be destroyed.

- (2) When, in relation to an offence to which this Division applies, the Children's Court:
- (a) exercises, in respect of a person, the power conferred on it by section 33 (1) (b), (c), (d), (e), (f) or (g), and
 - (b) is of the opinion that the circumstances of the case justify its doing so,
- the Children's Court may (whether on the application of the person or otherwise) order that any photographs, finger-prints and palm-prints, and any other prescribed records (other than records of the Children's Court), relating to the offence be destroyed.
- (3) If the Children's Court makes an order under subsection (1) or (2) in respect of a person, it shall cause a copy of the order to be given to the person and, if the person is a child, to a person responsible for the child.

Division 5 General

39 Definitions

In this Division:

authorised officer means:

- (a) an officer who is declared by the regulations to be an authorised officer for the purposes of this Division, or
- (b) an officer who belongs to a class of officers who are declared by the regulations to be authorised officers for the purposes of this Division.

Director-General means the person for the time being holding office or acting as the Director-General of the Department of Juvenile Justice.

officer means an officer or temporary employee, within the meaning of the [Public Sector Management Act 1988](#), employed in the Department of Juvenile Justice or in the Department of Corrective Services.

40 Variation of good behaviour bond or probation

- (1) In relation to an order referred to in section 33 (1) (b) or (e), the Children's Court may, on application made by or on behalf of the person to whom the order relates or by an authorised officer, do any one or more of the following things:
- (a) it may terminate the order,
 - (b) it may reduce the period of the order,
 - (c) it may vary any condition of the order in any respect, including (where the person has entered into the good behaviour bond, or been released on probation, on condition that the person will remain in the care of some other person named in

the order) the substitution of the name of another person for that of the person named in the order.

- (1A) Alternatively, if the order was made by a court exercising the functions of the Children's Court under section 18 (2), the Children's Court may (but is not obliged to) refer the application to the court concerned to be dealt with by that court.
- (2) The Children's Court may not extend the period of an order referred to in section 33 (1) (b) or (e).

41 Enforcement of conditions of good behaviour bond or probation or of compliance with outcome plan

- (1) If an authorised officer or a member of the police force informs an authorised justice, on oath, that the officer or member of the police force, with reasonable cause, believes that a person:
- (a) has entered into a good behaviour bond, or been released on probation, under section 33 (1), or been released under section 33 (1) (c1) on condition that the person complies with an outcome plan determined at a conference held under the *Young Offenders Act 1997* (referred to in this section as the **outcome plan**), and
 - (b) has failed to comply with a condition of the person's good behaviour bond or probation, or has failed to comply with the outcome plan,
- the authorised justice or another authorised justice:
- (c) may issue a summons for the appearance of the person before:
 - (i) in the case of a person who is under the age of 21 years—the Children's Court, or
 - (ii) in the case of a person who is of or above the age of 21 years—a Local Court, or
 - (d) if the authorised justice is satisfied that the person is unlikely to appear in answer to a summons—may issue a warrant directing the arrest of the person,
- as the authorised justice considers appropriate in the circumstances of the case.
- (2) An authorised officer, or a member of the police force, may arrest a person in respect of whom a warrant has been issued under subsection (1) (d), whether or not the warrant is in the possession of the officer or member of the police force at the time of arrest.
- (3) A person who is arrested under this section shall be brought before:
- (a) in the case of a person who is under the age of 21 years—the Children's Court, or

- (b) in the case of a person who is of or above the age of 21 years—a Local Court, to be dealt with in accordance with subsection (4) or (5), as the case may require.
- (4) A person who is brought before the Children’s Court shall, if it is proved that the person has failed to comply with a condition of the person’s good behaviour bond or probation or has failed to comply with the outcome plan, be dealt with by the Children’s Court in any manner in which the person could have been dealt with by the Children’s Court in relation to the offence for which the person entered into the good behaviour bond or was released on probation or on condition that the person comply with the outcome plan, as the case may be.
- (5) A person who is brought before a Local Court shall, if it is proved that the person has failed to comply with a condition of the person’s good behaviour bond or probation or has failed to comply with the outcome plan, be dealt with by the Local Court in any manner in which the person could have been dealt with by the Local Court in relation to the offence for which the person entered the good behaviour bond or was released on probation or on condition that the person comply with the outcome plan, as the case may be, had the person been of or above the age of 21 years when the person was originally dealt with in relation to that offence.
- (6) Despite subsections (3), (4) and (5), if the order under section 33 (1) that released the person on probation, or on condition that the person enter into good behaviour bond, or on condition that the person comply with the outcome plan, was made by a court other than the Children’s Court or the Local Court, the Children’s Court or the Local Court before which the person is brought under this section may (but is not obliged to) order that the person is to be brought before the court concerned to be dealt with by that court instead of the Children’s Court or the Local Court.
- (7) If a person is brought before a court other than the Children’s Court or the Local Court pursuant to an order under subsection (6), the court concerned may deal with the person in any manner in which the person could have been dealt with by that court in relation to the offence for which the person entered the good behaviour bond or was released on probation or on condition that the person comply with the outcome plan, as the case may be.

41A Provisions applicable where control order suspended subject to good behaviour bond

- (1) This section applies where the Children’s Court has, under section 33 (1B), suspended the execution of an order under section 33 (1) (g) and the person concerned has entered into a good behaviour bond.
- (2) Action with respect to a failure to comply with any such good behaviour bond may be taken under section 41. The good behaviour bond is to be terminated unless the court is satisfied that:

- (a) the person's failure to comply with the conditions of the bond was trivial in nature, or
 - (b) there are good reasons for excusing the person's failure to comply with the conditions of the bond.
- (3) If any such good behaviour bond is terminated:
- (a) the suspension of the execution of the order under section 33 (1) (g) ceases to have effect, and
 - (b) Part 4 of the *Crimes (Sentencing Procedure) Act 1999* applies to that order, except to the extent to which it has already been applied in relation to setting the term of the order, and
 - (c) subject to the requirements of Part 4 of that Act having been complied with, that order takes effect.
- (4) The conditions of any such good behaviour bond may be varied under section 40 or in proceedings taken under section 41.

42 Appeals

- (1) Subject to this Part, Parts 5, 5A and 5B of the *Justices Act 1902* apply to appeals from decisions of the Children's Court in the same way as they apply to appeals from decisions of a Local Court. In addition to any other person by whom an appeal may be taken under the *Justices Act 1902* in respect of a decision made by the Children's Court with respect to a person, an appeal may be taken:
- (a) by the person, or
 - (b) in the case of a child, by the child or:
 - (i) by a person responsible for the child,
 - (ii) by the child's solicitor, or
 - (iii) if the child is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* or the Director-General—by that Minister or the Director-General,on behalf of the child.
- (2) (Repealed)
- (3) In this section, a reference to a decision includes a reference to a finding, order, determination and judgment.
- (4) An appeal may be made in relation to a finding of guilt referred to in section 33 (1)

even though the charge to which the finding relates has been dismissed by an order made under section 33 (1) (a).

(5) (Repealed)

Part 4 Mistake in exercise of jurisdiction

43 Definition

In this Part, a reference to a decision includes a reference to a finding, order, determination and judgment, but does not include a reference to:

- (a) in relation to the Children's Court—an order made under section 33 (1) (a), or
- (b) in relation to any other court:
 - (i) an order dismissing a charge, or
 - (ii) an order discharging an offender under section 10 (1) (b) of the *Crimes (Sentencing Procedure) Act 1999*.

44 Remission of cases on account of defendant's age

If a court before which a person is charged with an offence is satisfied that, because of any provision of this Act, it did not or does not have jurisdiction to deal with the charge, it may remit the case to such other court as has jurisdiction to deal with the charge.

45 Review of decisions where mistake as to age

(1) If:

- (a) a decision is made by a court in respect of an offence on the assumption that the person to whom the decision relates had or had not attained a particular age at a particular time,
- (b) the Attorney General is satisfied that the assumption was incorrectly made, and
- (c) the person is, at the time the Attorney General is so satisfied, still affected by the decision,

the Attorney General shall, as soon as practicable after being so satisfied, cause an application to be made to the court which made the decision for a review of the decision.

(2) A court to which an application for review is made:

- (a) may set aside or quash the decision,
- (b) may set aside or quash the decision and remit the case to another court,

(c) may order that the decision be varied, in such manner as the court thinks fit, in so far as it appears to the court that the purported age of the person to whom the decision relates was material to the nature of the decision or the period for which the decision was to be effective, or

(d) may order that the application be dismissed.

(3) The setting aside or quashing, under subsection (2) (a) or (b), of a decision in respect of an offence shall not affect any information laid or complaint made in relation to the offence or any further proceedings on that information or complaint.

46 (Repealed)

47 Exclusion of damages and compensation

No action for damages or compensation shall lie against any person arising out of a decision or any thing done pursuant to a decision, or the setting aside, quashing or variation of a decision, pursuant to any provision of this Part.

48 Section 5 not affected

Nothing in this Part limits the operation of section 5.

Part 5 Miscellaneous

49 Proceedings for offences

- (1) Subject to Part 3 and subsection (2), proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings for an offence against section 11 may be dealt with by the Supreme Court in its summary jurisdiction.
- (3) If proceedings for an offence against section 11 are brought before a Local Court, the maximum penalty that the Local Court may impose on a corporation is 50 penalty units.

50 Bail Act 1978 to prevail

The *Bail Act 1978* prevails in the event of an inconsistency between that Act and this Act.

50A Procedures for remitting cases from one court to another

- (1) A court that under this Act remits proceedings to another court:
 - (a) may, subject to the *Bail Act 1978*, commit the defendant to custody until the defendant can appear or be brought before the other court, and
 - (b) shall cause to be sent to the clerk of the other court or other proper officer all documents and depositions held by the firstmentioned court in relation to the

proceedings.

- (2) The deposition of any witness called and examined before a court that remits proceedings to another court may be accepted as evidence for the accused or the prosecution by the other court if the other party consents to its being so accepted or if it is proved on oath:
 - (a) that the witness is dead, or so ill as to be unable to travel, or cannot, after such search or for such reason as to the other court seems sufficient, be produced by the party tendering the deposition, and
 - (b) that:
 - (i) in the case of a deposition taken down in writing—the deposition was taken in the presence of the other party, or
 - (ii) in the case of a deposition that is in the form of a transcript of the record made, by a means other than writing, of the evidence of the witness—the record so made is a true record of that evidence, and was made in the presence of the other party, and the transcript is a correct transcript of the record so made, and
 - (c) that the other party, or the other party's barrister or solicitor, has had full opportunity to examine the witness.

50B Special provision relating to drug rehabilitation programs

- (1) This section applies to any program for the rehabilitation of persons affected by alcohol or other drugs in which a child is required to participate as a result of an order or a condition of an order of the Children's Court in connection with criminal proceedings against the child.
- (2) The Children's Court may, as a condition of any such order, require the provision of information about the child's participation in any such program to be given to a member or officer of the Children's Court by a person who is involved in the administration of, or who provides services in connection with, the program.
- (3) The following provisions apply to and in respect of any information provided for the purposes of this section (**protected information**):
 - (a) the provision of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct,
 - (b) no liability for defamation is incurred because of the provision of the information,
 - (c) the provision of the information does not constitute grounds for civil proceedings for malicious prosecution or conspiracy,

- (d) the information is not admissible in evidence in any proceedings before a court, tribunal or committee,
 - (e) a person is not compellable in any proceedings before a court, tribunal or committee to disclose the information or to produce any document that contains the information.
- (4) The provisions of subsection (3) (d) and (e) do not apply to or in respect of the provision of protected information in proceedings before the Children's Court or any court hearing an appeal from a decision of that court.
- (5) The child participating in any such program is taken to have authorised the communication of protected information between anyone referred to in subsection (2).
- (6) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information for the purposes of this section.

51 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
- (a) the kind of conditions that may or may not be imposed in relation to orders made under section 33 (1) (b) and (e), and
 - (b) the keeping of records for the purposes of this Act.
- (2) A regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

52 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 (Repealed)

Schedule 2 Savings and transitional provisions

(Section 52)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts or provisions of Acts:

Children (Criminal Proceedings) Amendment Act 1989

Schedule 2 to the *Crimes Legislation Amendment Act 1998*

Schedule 1 to the *Crimes Legislation Amendment Act 1999*

Schedule 2 to the *Crimes Legislation Amendment Act 2000*

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on the enactment of the **Children (Criminal Proceedings) Amendment Act 1989**

2 Definition

In this Part:

amending Act means the *Children (Criminal Proceedings) Amendment Act 1989*.

3 Application of amending Act to current proceedings etc

- (1) An amendment made to this Act by Schedule 1 (3), (5), (6), (8), (12) (b) or (c) or (14) to the amending Act applies to proceedings pending at or commenced after the amendment commences.
- (2) An amendment made to this Act by Schedule 1 (7), (10) (a) or (b), (11), (12) (a), (15) or (21) to the amending Act does not apply to proceedings commenced before the

amendment commences.

(3) An amendment made by Schedule 1 (13) to the amending Act does not apply to a control order made before the amendment commences.

4 Consents for publication of names etc

The amendments made to this Act by Schedule 1 (4) to the amending Act do not apply to any consent given under section 11 of this Act before those amendments commence.

5 Regulations concerning background reports

The amendment made to this Act by Schedule 1 (8) (b) to the amending Act does not affect any regulation made for the purposes of section 25 (2) (a) of this Act and in force immediately before that amendment commences.

Part 3 Crimes Legislation Amendment Act 1998

6 Orders of recognizance and probation made before commencement of amendments

Sections 18, 40 and 41, as amended by the *Crimes Legislation Amendment Act 1998*, extend to:

- (a) an order of recognizance under section 33 (1) (b) or (d), and
- (b) an order of probation under section 33 (1) (e),

made, by a court exercising the functions of the Children's Court under section 18 (2), before the commencement of those amendments.

Part 4 Crimes Legislation Amendment (Sentencing) Act 1999

7 Convictions recorded before commencement of amendments

Section 11 (4B), as inserted by the *Crimes Legislation Amendment (Sentencing) Act 1999*, does not apply to or in respect of a conviction recorded before the commencement of this clause.

Part 5 Crimes Legislation Amendment Act 1999

8 Outcome plans made before commencement of amendments

Section 41, as amended by the *Crimes Legislation Amendment Act 1999*, extends to any failure by a person, after the commencement of Schedule 1 [1] to that Act, to comply with an outcome plan that was determined at conference before that commencement.

Part 6 Crimes Legislation Amendment Act 2000

9 New sentencing options in pending proceedings

Section 33 (1) (c2) and (1B), as inserted by the *Crimes Legislation Amendment Act 2000*, extend to proceedings pending at the commencement of those provisions.