

Children's Court Act 1987 No 53

[1987-53]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - Miscellaneous Acts (Local Court) Amendment Act 2007 No 94* (not commenced)
 - Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13*, Sch 2.2 (not commenced — Sch 2.2 [1]–[6] [8] [9] [11]–[15] and [16] (except to the extent that it would insert cl 8 into Sch 2) to commence on 1.6.2009)

Authorisation

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
3 Definitions	4
Part 2 Constitution of the Court	5
4 Constitution of the Court	5
5 Seal of the Court	5
6 Composition of the Court	5
7 Appointment of Children's Magistrates	5
8 Senior Children's Magistrate	5
9 Acting Senior Children's Magistrate	6
10 (Repealed)	6
10A Children's Registrars	6
11 Other Registrars and other officers of the Court	7
Part 3 Jurisdiction of the Court	7
12 Jurisdiction generally	7
13 Single member to exercise jurisdiction of the Court	7
14 Sittings of the Court	7
15 Orders of the Court	7
Part 3A Advisory Committee and Clinic	7

15A Children's Court Advisory Committee.....	8
15B Children's Court Clinic	8
Part 4 Miscellaneous	8
16 Functions of the Senior Children's Magistrate	8
17 Delegation	9
18 Reports	9
19 Venue	10
20 Change of venue	10
21 Contempt.....	10
22 Judicial notice of signatures.....	10
23 Rules.....	11
24 Savings and transitional provisions	11
Schedule 1 Provisions relating to Children's Magistrates	11
Schedule 2 Savings and transitional provisions	13
Schedule 3 Savings and transitional provisions relating to part-time Children's Magistrates	14

Children's Court Act 1987 No 53



New South Wales

An Act to establish a Children's Court of New South Wales.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Children's Court 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 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:

Chief Magistrate means the person appointed under section 14 (1) of the *Local Courts Act 1982* to be the Chief Magistrate of the Local Courts.

Children's Magistrate means a person appointed under section 7 (1) to be a Children's Magistrate.

Children's Registrar means a person employed as a Children's Registrar as referred to in section 10A.

rule means a rule made under this Act.

Senior Children's Magistrate means the person appointed under section 8 (1) to be Senior Children's Magistrate.

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

- (2) 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 Constitution of the Court

4 Constitution of the Court

There is constituted by this Act a court of record to be known as the Children's Court of New South Wales.

5 Seal of the Court

There shall be a seal of the Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Court shall be so sealed or stamped.

6 Composition of the Court

The Court shall be composed of such Children's Magistrates as the Chief Magistrate may from time to time appoint.

7 Appointment of Children's Magistrates

- (1) The Chief Magistrate may, by instrument in writing, appoint any qualified person to be a Children's Magistrate.
- (2) A person is qualified to be appointed as a Children's Magistrate if the person:
 - (a) is a Magistrate, and
 - (b) has, in the opinion of the Chief Magistrate, such knowledge, qualifications, skills and experience in the law and the social or behavioural sciences, and in dealing with children and young people and their families, as the Chief Magistrate considers necessary to enable the person to exercise the functions of a Children's Magistrate.
- (2A) A Children's Magistrate is to undertake and complete such ongoing courses of training as the Chief Magistrate may, in consultation with the Senior Children's Magistrate, require.
- (3) Schedule 1 has effect with respect to the Children's Magistrates.
- (4) Schedule 3 (Savings and transitional provisions relating to part-time Children's Magistrates) has effect.

8 Senior Children's Magistrate

- (1) The Chief Magistrate, with the concurrence of the Attorney General, may, by instrument in writing, appoint a Children's Magistrate as Senior Children's Magistrate.

- (2) Except as provided by subsection (3), the Senior Children's Magistrate holds office until the Senior Children's Magistrate ceases to be a Children's Magistrate.
- (3) The Senior Children's Magistrate may, with the approval of the Chief Magistrate, resign office as the Senior Children's Magistrate without resigning office as a Children's Magistrate.
- (4) On appointment, the Senior Children's Magistrate is taken to be a Deputy Chief Magistrate appointed as such under section 15 (1) of the *Local Courts Act 1982*.

9 Acting Senior Children's Magistrate

- (1) The Chief Magistrate may, by instrument in writing, appoint a Children's Magistrate, or a person qualified to be appointed as a Children's Magistrate, to be acting Senior Children's Magistrate:
 - (a) during any vacancy in the office of Senior Children's Magistrate, or
 - (b) during any period for which the Senior Children's Magistrate is absent from duty.
- (2) While acting as the Senior Children's Magistrate, the acting Senior Children's Magistrate:
 - (a) shall have and may exercise:
 - (i) the functions of the Senior Children's Magistrate, and
 - (ii) in the case of a person who is not a Children's Magistrate—the functions of a Children's Magistrate, and
 - (b) shall be entitled to be paid the same remuneration as the Senior Children's Magistrate.

10 (Repealed)

10A Children's Registrars

- (1) Such Children's Registrars as may be necessary to enable the Court to exercise its jurisdiction are to be employed under the *Public Sector Management Act 1988*.
- (2) A Children's Registrar has such functions as may be conferred or imposed on a Children's Registrar by the rules or by or under any other Act.
- (3) Despite the provisions of the *Children and Young Persons (Care and Protection) Act 1998* and the other provisions of this Act, the functions that may be conferred or imposed on a Children's Registrar by the rules include:
 - (a) any function of the Court or a Children's Magistrate under the *Children and Young Persons (Care and Protection) Act 1998*, and

(b) any function of the Court or a Children's Magistrate under this Act that relates to a function referred to in paragraph (a).

(4) A function referred to in subsection (3) that is exercised by a Children's Registrar is taken to have been exercised by the Court or a Children's Magistrate, as the case requires.

(5) A decision or order made or direction given by a Children's Registrar when exercising a function referred to in subsection (3) may be set aside or varied by the Court.

(6) The conferring or imposing of a function of the Court or a Children's Magistrate on a Children's Registrar does not prevent the exercise of the function by the Court or a Children's Magistrate.

11 Other Registrars and other officers of the Court

Other Registrars of the Court, and such other staff as may be necessary to enable the Court to exercise its jurisdiction, shall be employed under the [Public Service Act 1979](#).

Part 3 Jurisdiction of the Court

12 Jurisdiction generally

(1) The Court shall have such jurisdiction as may be conferred or imposed on it by or under this or any other Act.

(2) The Court may exercise its jurisdiction throughout the whole of New South Wales.

13 Single member to exercise jurisdiction of the Court

The jurisdiction of the Court shall be exercised:

(a) by a Children's Magistrate,

(b) (Repealed)

sitting alone.

14 Sittings of the Court

More than one sitting of the Court may be held at the same time.

15 Orders of the Court

The Court may, in relation to all matters in respect of which it has jurisdiction, make such orders, including interlocutory orders, as it thinks appropriate.

Part 3A Advisory Committee and Clinic

15A Children's Court Advisory Committee

- (1) The Attorney General is to establish, in accordance with the rules, a Children's Court Advisory Committee.
- (2) The Senior Children's Magistrate is to be the Chairperson of the Committee.
- (3) The Committee has the following functions:
 - (a) consulting with persons using the Court,
 - (b) providing advice to the Attorney General and the Minister for Community Services,
 - (c) providing advice to the Court on the rules of the Court, on practice directions and on procedures before the Court,
 - (d) such other functions as may be conferred or imposed on the Committee by the rules or by or under any other Act.

15B Children's Court Clinic

- (1) The Attorney General is to establish and maintain, in accordance with the rules, a Children's Court Clinic.
- (2) The Children's Court Clinic has the following functions:
 - (a) making clinical assessments of children,
 - (b) submitting reports to courts,
 - (c) such other functions as may be prescribed by the rules.

Part 4 Miscellaneous

16 Functions of the Senior Children's Magistrate

- (1) The Senior Children's Magistrate shall:
 - (a) administer the Court,
 - (b) arrange sittings of the Court,
 - (c) convene, at least once every 6 months, a meeting of Children's Magistrates and such other persons as the Senior Children's Magistrate thinks fit,
 - (d) confer regularly with community groups and social agencies on matters involving children and the Court, and
 - (e) provide judicial leadership to the Court, and
 - (f) in conjunction with the Chief Magistrate, develop practice directions and

recommendations for rules, and

(g) oversee the training of Children's Magistrates and prospective Children's Magistrates in accordance with the rules.

- (2) The Senior Children's Magistrate may require specified functions of Children's Magistrates to be exercised by specified Children's Magistrates or Children's Magistrates of a specified class, and any Children's Magistrate of whom a requirement is made under this subsection shall comply with the requirement.
- (3) The Senior Children's Magistrate shall, in the exercise of a function under this section, be subject to the control and direction of the Chief Magistrate.

17 Delegation

(1) The Senior Children's Magistrate may delegate to:

- (a) a Children's Magistrate,
(b) (Repealed)

the exercise of any of the Senior Children's Magistrate's functions under section 16.

(2) A delegation under this section:

- (a) shall be in writing,
(b) may be general or limited, and
(c) may be revoked, wholly or partly, by the Senior Children's Magistrate.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Senior Children's Magistrate.

(5) A delegation under this section does not prevent the exercise of a function by the Senior Children's Magistrate.

(6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

18 Reports

(1) The Senior Children's Magistrate shall submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on the activities of the Court.

- (2) A report shall deal with such matters as the Attorney General directs and with such other matters as the Senior Children's Magistrate considers appropriate to include in the report.

19 Venue

- (1) Sittings of the Court shall be held:
- (a) in a building or room approved for that purpose by the Attorney General, or
 - (b) if, in the opinion of the Court in a particular case, it is expedient that a sitting of the Court be held in some other building or room, in that other building or room.
- (2) If a room used or occupied by another court is approved under this section, sittings of the Court shall not be held in the room while the ordinary business of that other court is being transacted.

20 Change of venue

If it appears to the Court that any matter within the jurisdiction of the Court can be more conveniently or fairly heard at a sitting of the Court at some other place, the Court may:

- (a) adjourn the hearing of the matter, whether any party appears or not,
- (b) remand any person charged before it to a sitting of the Court at some other place specified by it, and
- (c) appoint a day for the hearing.

21 Contempt

- (1) A person shall not commit contempt in the face of the Court.
Maximum penalty: 10 penalty units or imprisonment for 14 days.
- (2) Proceedings for contempt shall be dealt with summarily before the Children's Court.
- (3) For the purpose of dealing with proceedings for contempt by a person in respect of whom the Children's Court would not, but for this subsection, have jurisdiction, the Children's Court:
- (a) shall have, and may exercise, the jurisdiction of a Local Court, and
 - (b) shall not have, and may not exercise, the jurisdiction of the Children's Court, as regards that person.

22 Judicial notice of signatures

Judicial notice shall be taken of the signatures of:

- (a) the Senior Children's Magistrate,
 - (b) a Children's Magistrate,
 - (c) (Repealed)
 - (d) a Children's Registrar or other Registrar of the Court,
- where appearing on a document issuing out of the Court.

23 Rules

- (1) The Governor may make rules, not inconsistent with this Act or the *Children and Young Persons (Care and Protection) Act 1998*, for or with respect to any matter that by this Act or the *Children and Young Persons (Care and Protection) Act 1998* 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 or the *Children and Young Persons (Care and Protection) Act 1998* and, in particular, for or with respect to:
 - (a) the practice and procedure of the Court, and
 - (b) courses of training to be attended by Children's Magistrates and persons proposed to be appointed as Children's Magistrates.
- (2) A provision of a rule 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.

24 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 Provisions relating to Children's Magistrates

(Section 7)

1 Magisterial status etc not affected

- (1) A Children's Magistrate does not cease to be a Magistrate, nor is the Children's Magistrate's rank, title, status and precedence as a Magistrate affected, merely because of the Children's Magistrate's appointment as a Children's Magistrate.
- (2) The service of a Children's Magistrate in his or her capacity as such a Magistrate shall,

for all purposes, be taken to be service as a Magistrate.

2 Term of office

A Children's Magistrate shall hold office for such period (not exceeding 3 years) as may be specified in the Children's Magistrate's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

2A Conditions of service

A person holding office as Children's Magistrate is taken to hold the office on either a full-time or part-time basis, according to whether the person holds the office of Magistrate on a full-time or part-time basis under the *Local Courts Act 1982*.

3 Remuneration

A Children's Magistrate is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) such travelling and subsistence allowances as the Attorney General may from time to time determine in respect of the Children's Magistrate.

4 Public Service Act 1979 not to apply to members of the Court

The *Public Service Act 1979* does not apply to or in respect of the appointment of a Children's Magistrate and a Children's Magistrate is not, as a Children's Magistrate, subject to that Act.

5 Casual vacancies

A person shall be deemed to have vacated office as a Children's Magistrate if the person:

- (a) ceases to be a Magistrate, or
- (b) resigns office by instrument in writing addressed to the Chief Magistrate.

6 Appointment as Magistrate unaffected by resignation etc

A person does not cease to be a Magistrate merely because of:

- (a) his or her resignation from office as a Children's Magistrate, or
- (b) the expiration of his or her term of office as a Children's Magistrate.

Schedule 2 Savings and transitional provisions

(Section 24)

Part 1 Preliminary

1 Saving and transitional regulations

- (1) The Governor may make regulations, not inconsistent with this Act, containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Children and Young Persons (Care and Protection) Act 1998

Children and Young Persons Legislation (Repeal and Amendment) Act 1998

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from 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 enactment of **Children and Young Persons Legislation (Repeal and Amendment) Act 1998**

2 Definitions

In this Part, **the amending Act** means the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998*.

3 Children's Magistrates

A person holding the office of Children's Magistrate immediately before the repeal and re-enactment of section 7 (2) by the amending Act may be reappointed to that office for one further term if the person is qualified under that subsection as in force immediately before its repeal and re-enactment.

4 Authorised Magistrates

- (1) Despite the repeal of section 10 (2) by the amending Act, the Governor may, by proclamation published in the Gazette, revoke a proclamation under section 10 (1).

- (2) The provisions of this Act relating to authorised Magistrates continue to apply (as if they had not been repealed by the amending Act) to and in respect of each place specified in a proclamation under section 10 (1) (being a proclamation that had not been revoked before the repeal of section 10) until such time as the proclamation is revoked under subclause (1).

5 Venue

- (1) Sittings of the Court may be held in the Court House:
 - (a) at any place at which a Local Court is established (or is taken to have been established) for the time being under section 6 (1) of the *Local Courts Act 1982*, or
 - (b) at any of the places specified in the Schedule to the proclamation under section 10 published in the Gazette on 27 November 1992 at page 8552.
- (2) Each Court House referred to in subclause (1) is taken to be a building approved under section 19 (1) (a). The Attorney General may, by notice published in the Gazette, revoke an approval under that section.

Schedule 3 Savings and transitional provisions relating to part-time Children's Magistrates

1 Regulations

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

Local Courts Amendment (Part-time Magistrates) Act 1999
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from 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.

2 Remuneration of part-time Children's Magistrates

Until a relevant determination is made and takes effect under the *Statutory and Other Offices Remuneration Act 1975*, a Children's Magistrate holding office on a part-time basis is entitled to be paid in accordance with the determination in force for the time being for

Children's Magistrates, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.