

# 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.

### Authorisation

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## Contents

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8-10 (Repealed) .....	7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

15A Children’s Court Advisory Committee.....	8
15B Children’s Court Clinic .....	9
<b>Part 4 Miscellaneous .....</b>	<b>9</b>
16 Functions of the President .....	9
17 (Repealed) .....	10
18 Reports .....	10
19 Venue .....	10
20 Change of venue .....	10
21 Contempt.....	10
22 Judicial notice of signatures.....	11
22A Appeals in relation to decisions of Presidential Children’s Court.....	11
23 Rules.....	11
23A Practice notes.....	12
23B Court may give directions in circumstances not covered by rules or practice notes.....	13
24 Savings and transitional provisions .....	13
<b>Schedule 1 Provisions relating to Children’s Magistrates .....</b>	<b>13</b>
<b>Schedule 2 Savings and transitional provisions .....</b>	<b>14</b>
<b>Schedule 3 Savings and transitional provisions relating to part-time Children’s Magistrates</b> .....	<b>17</b>

# 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 Court Act 2007* to be the Chief Magistrate of the Local Court.

**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.

**President** means the person appointed under section 6A as the President of the Children's Court.

**rule** means a rule made under this Act.

**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 is composed of the President and such Children's Magistrates as are appointed under this Act.

#### **6A President of Children's Court**

- (1) The Governor may, by commission under the public seal of the State, appoint a qualified person as the President of the Children's Court.
- (2) A person is qualified to be appointed as the President only if the person holds office as a Judge of the District Court.
- (3) Subject to this section, the President holds office for such term (not exceeding 5 years) as is specified in his or her instrument of appointment.
- (4) The appointment of a person as the President does not affect:
  - (a) the person's tenure as a Judge of the District Court, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as a Judge of the District Court.
- (5) Service in the office of the President is, for all purposes, taken to be service in the office of Judge of the District Court.
- (6) A person is taken to have vacated office as the President if the person:
  - (a) ceases to be a Judge of the District Court, or
  - (b) resigns office by instrument in writing addressed to the Governor.
- (7) A person does not cease to be a Judge of the District Court merely because of:

- (a) his or her resignation from office as the President, or
  - (b) the expiration of his or her term of office as the President.
- (8) The President may, while holding office as the President, exercise the jurisdiction of the District Court if:
- (a) the President is requested to do so by the Chief Judge of the District Court in relation to particular proceedings before that Court, and
  - (b) the President agrees to the request.

#### **6B Acting President of Children's Court**

- (1) The Governor may, by instrument in writing, appoint a Children's Magistrate to be the Acting President:
- (a) during any vacancy in the office of the President, or
  - (b) during any period for which the President is absent from duty.
- (1A) Unless the Governor has made an appointment under subsection (1) (and without limiting subsection (1)), the Attorney General may, by instrument in writing, appoint a Children's Magistrate to be Acting President:
- (a) during any vacancy in the office of the President, or
  - (b) during any period for which the President is absent from duty.
- (1B) An appointment under this section may be made for a particular vacancy or absence or for any vacancy or absence that occurs from time to time.
- (2) While acting as the President, the person appointed as the Acting President:
- (a) has and may exercise the functions of the President, and
  - (b) is entitled to be paid the same remuneration as the President.
- (3) However, service in the office of the Acting President is not taken to be service in the office of Judge of the District Court.

#### **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.
- (1A) Any such appointment may only be made in consultation with the President.
- (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 and the President, 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 and President each consider 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 President may, in consultation with the Chief 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.

### **8-10 (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 [Government Sector Employment Act 2013](#).

(1A) A person cannot be employed as a Children's Registrar unless the person is an Australian lawyer.

(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 [Government Sector Employment Act 2013](#).

## **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**

- (1) The jurisdiction of the Court may be exercised:
  - (a) by the President, or
  - (b) by a Children's Magistrate, or
  - (c) a Magistrate,  
sitting alone.
- (2) In this section, **Magistrate** means a Magistrate authorised by the President and Chief Magistrate to exercise any function conferred or imposed on a Children's Magistrate by or under this or any other Act.

### **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 President 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 Minister for Health 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 President**

- (1) The President has the following functions:
  - (a) to administer the Court,
  - (b) to arrange sittings of the Court,
  - (c) to convene, at least once every 6 months, a meeting of Children's Magistrates and such other persons as the President thinks fit,
  - (d) to confer regularly with community groups and social agencies on matters involving children and the Court,
  - (e) to provide judicial leadership to the Court,
  - (f) to develop recommendations for rules,
  - (g) to oversee the training of Children's Magistrates and prospective Children's Magistrates.
- (2) The President may also exercise any of the functions that are conferred or imposed on a Children's Magistrate under this or any other Act.
- (3) The President 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 must comply with the requirement.

- (4) The President may delegate to a Children's Magistrate any of the President's functions under this section, other than this power of delegation.

## **17 (Repealed)**

## **18 Reports**

- (1) The President 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 President 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 the 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 President,
  - (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.

## **22A Appeals in relation to decisions of Presidential Children's Court**

(1) In this section:

***appeal*** includes the referral of any matter.

***decision*** includes any order or judgment.

***Presidential Children's Court*** means the Children's Court constituted by the President.

- (2) An appeal to the District Court under any Act or other law in relation to a decision of the Presidential Children's Court is, despite the provisions of that Act or law, taken to be an appeal to the Supreme Court.
- (3) Subsection (2) has effect only to the extent provided by the regulations.
- (4) For the purposes of subsection (2), the provisions of any Act or law relating to appeals are subject to such modifications as may be prescribed by the regulations.
- (5) The Governor may make regulations for the purposes of this section.

## **23 Rules**

- (1) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed by rules, or that is necessary or convenient to be prescribed by rules, in relation to the practice or procedure of the Court.

- (2) In particular, the rules may make provision for or with respect to the following matters:
  - (a) the practice or procedure to be followed in criminal proceedings,
  - (b) the functions of Children's Registrars and other officers of the Court,
  - (c) the review of orders or decisions of Children's Registrars, other registrars and other officers of the Court,
  - (d) the practice or procedure to be followed in any proceedings under any other law under which jurisdiction or any function is conferred on the Court,
  - (e) any matter incidental to, or relating to, any practice or procedure referred to in this section,
  - (f) courses of training to be attended by Children's Magistrates and persons proposed to be appointed as Children's Magistrates.
- (3) A rule may be made under this Act in relation to any matter for which a rule-making power is conferred on the Court by or under any other Act or law.

### **23A Practice notes**

- (1) Subject to the rules, the President may issue practice notes in relation to any matter with respect to which rules may be made.
- (2) A practice note issued under this section:
  - (a) must be published in the Gazette, and
  - (b) takes effect on the day on which it is published in the Gazette or, if a later day or days are specified in the practice note for that purpose, on the later day or days so specified.
- (3) A practice note issued under this section may be amended or repealed by a further practice note issued under this section.
- (4) Subject to subsection (5), sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note issued under this section in the same way as they apply to a statutory rule.
- (5) For the purpose of applying section 40 of the *Interpretation Act 1987* to a practice note issued under this section, a reference in that section to the publication of a statutory rule is to be read as a reference to the publication of the practice note as provided by subsection (2).

### **23B Court may give directions in circumstances not covered by rules or practice notes**

- (1) In relation to particular proceedings, the Court may, in respect of any matter for which the rules or practice notes do not make provision, give directions that the Court considers appropriate in connection with the practice and procedure to be followed in relation to that matter.
- (2) Any such direction has no effect to the extent that it is inconsistent with any provision of the *Children and Young Persons (Care and Protection) Act 1998* relating to proceedings before the Court.
- (3) Anything done in accordance with a direction under this section (including the commencing of proceedings and the taking of any step in proceedings) is taken to have been validly done.

### **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 5 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 Court Act 2007*.

### **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 Government Sector Employment Act 2013 not to apply**

The office of Children's Magistrate is a statutory office and the *Government Sector Employment Act 2013* does not apply to that office.

#### **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 and to the President.

#### **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*

*Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*, to the extent that it amends this Act

- (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 sittings of the Local Court are held for the time being under section 22 of the [Local Court Act 2007](#), 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.

## **Part 3 Provisions consequent on enactment of [Children Legislation](#)**

## Amendment (Wood Inquiry Recommendations) Act 2009

### 6 Definition

In this Part:

**amending Act** means the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*.

### 7 Provisions relating to abolished office of Senior Children's Magistrate

- (1) In accordance with section 56 (2) of the *Constitution Act 1902*, the person who, immediately before the repeal of section 8 of this Act by the amending Act, held office as Senior Children's Magistrate is entitled (without loss of remuneration) to hold office as a Magistrate or Children's Magistrate for the remainder of the term for which the person was appointed as Senior Children's Magistrate.
- (2) A reference to the Senior Children's Magistrate in any other Act (other than the *Constitution Act 1902*) or statutory instrument is to be construed as a reference to the President.

### 8 Provisions relating to Children's Court Clinic

The regulations made under clause 1 (1) may make provision for or with respect to:

- (a) transferring the staff of the Children's Court Clinic, and
- (b) requiring references to the Children's Court Clinic in this or any other Act or statutory instrument, or any other instrument, or any contract or agreement, to be construed as a reference,

to such public sector agency (or part of a public sector agency) as may be prescribed by the regulations.

## Part 4 Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2009

### 9 Authorised Magistrates

- (1) Anything done before the commencement of this clause by an authorised Magistrate in the purported exercise of jurisdiction conferred by the proclamation referred to in clause 4 in accordance with the directions of the President or Chief Magistrate and which would have been validly done had section 13 (c) and (2) (as inserted by the amending Act) been in force when it was done is validated.
- (2) In this clause:

**amending Act** means the *Courts and Crimes Legislation Amendment Act 2009*.



## **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.