

# Children (Criminal Proceedings) Act 1987 No 55

[1987-55]



New South Wales

## Status Information

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### Provisions in force

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

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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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.

(1A) Section 9 commences on the date that section 9 (2) is repealed by the *Children (Criminal Proceedings) Amendment Act 2008*.

(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.

**authorised justice** means—

(a) a Magistrate, or

(b) an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

**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 attendance notice** means a court attendance notice issued under Division 1

of Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

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

**juvenile justice officer** means a juvenile justice officer employed in the Department of Juvenile Justice.

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

**person responsible**, in relation to a child, means—

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

**person subject to control** has the same meaning as it has in the *Children (Detention Centres) Act 1987*.

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

**road transport legislation** has the same meaning as it has in the *Road Transport Act 2013*.

**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*),
- (c1) an offence under the *Firearms Act 1996* relating to the manufacture or sale of firearms that is punishable by imprisonment for 20 years,
- (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,
- (b) the *Roads Act 1993*,
- (c) the *Motor Accidents Compensation Act 1999*, or
- (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.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (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.
- (4) Notes included in this Act do not form part of this Act.

## **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 exercise of functions under Act**

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

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

- (1) Except as provided by this Act, the Local Court may not 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**

- (1) Criminal proceedings should not be commenced against a child otherwise than by way of court 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 court attendance notice, or

(ii) the child is likely to commit further offences,

if the proceedings were to be commenced by court 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) (Repealed)

### **9 Expedition where child in custody**

(1) If criminal proceedings are to be commenced against a child otherwise than by way of court attendance notice, and the child is not released (with or without bail under the *Bail Act 2013*), the child shall be brought before the Children's Court as soon as practicable.

(2) (Repealed)

### **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.
- (3A) Despite anything to the contrary in this Act, if criminal proceedings to which a child is a party are proceedings for a prescribed sexual offence (within the meaning of the [Criminal Procedure Act 1986](#))—
- (a) sections 291, 291A, 291B, 291C and 294C of that Act apply in respect of the proceedings, and
  - (b) subsections (1) and (2) of this section do not apply in respect of any part of the proceedings held in camera under section 291, 291A or 291B of that Act, and
  - (c) a person or persons whom a complainant is entitled to have present near the complainant when giving evidence (under section 294C of that Act) cannot be excluded from, or directed to leave, the place where the proceedings are heard under this section (whether or not the proceedings are held in camera).

**Note—**

Sections 291, 291A and 291B of the [Criminal Procedure Act 1986](#) require certain proceedings, or parts of proceedings, for a prescribed sexual offence to be held in camera. The general rule is that any part of a proceeding in which evidence is given by the complainant must be held in camera (unless the court otherwise directs), and other parts of the proceedings may also be held in camera. The complainant is entitled to have one or more persons chosen by the complainant to be near the complainant when giving evidence under section 294C of that Act.

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

**Note—**

"De facto partner" is defined in section 21C of the [Interpretation Act 1987](#).

**11 (Repealed)**

**12 Proceedings to be explained to children**

- (1) If criminal proceedings are brought against a child, the court that hears those proceedings must take such measures as are reasonably practicable to ensure that the child understands the proceedings.
- (2), (2A) (Repealed)
- (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**

The provisions of section 10 and Division 3A apply to a child who appears or is brought before a court in relation to a bail application in the same way as those provisions 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 14 years—an adult (other than a member of the police force) who was present with the consent of the child, or
    - (iv) an Australian legal practitioner 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, and
  - (c) a reference to a person responsible for a child does not include a member of the police force (unless he or she has parental responsibility for the child).
- (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 3A Publication and broadcasting of names**

#### **15A Publishing and broadcasting of names prohibited**

- (1) The name of a person must not be published or broadcast in a way that connects the person with criminal proceedings if—

- (a) the proceedings relate to the person and the person was a child when the offence to which the proceedings relate was committed, or
  - (b) the person appears as a witness in the proceedings and was a child when the offence to which the proceedings relate was committed (whether or not the person was a child when appearing as a witness), or
  - (c) the person is mentioned in the proceedings in relation to something that occurred when the person was a child, or
  - (d) the person is otherwise involved in the proceedings and was a child when so involved, or
  - (e) the person is a brother or sister of a victim of the offence to which the proceedings relate, and that person and the victim were both children when the offence was committed.
- (2) This section applies only to the publication or broadcast of a person's name to the public, or a section of the public, by publication in a newspaper or periodical publication, by radio or television broadcast or other electronic broadcast, by the Internet, or by any other means of dissemination.
- (3) The publication of information to an Internet website that provides the opportunity for, or facilitates or enables, dissemination of information to the public or a section of the public (whether or not the particular publication results in the dissemination of information to the public or a section of the public) constitutes the publication of information to the public or a section of the public for the purposes of this section.
- (4) This section applies to the publication or broadcast of the name of a person—
- (a) whether the publication or broadcast occurs before or after the proceedings concerned are disposed of, and
  - (b) even if the person is no longer a child, or is deceased, at the time of the publication or broadcast.
- (5) A reference in this Division to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.
- (6) A reference in this Division to a person 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 Division 3 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*.
- (6A) A reference in this Division to criminal proceedings includes a reference to a hearing under Part 4C of the *Children (Detention Centres) Act 1987*.



- (7) A person who publishes or broadcasts the name of any person the publication or broadcasting of which is prohibited by this section 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).

- (8) Proceedings for an offence against this section that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence.

**15B Exception for official report of proceedings**

This Division does not prohibit the publication or broadcasting of an official report of the proceedings of a court that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this Division.

**15C Exception for person convicted of serious children's indictable offence**

- (1) This Division does not prohibit the publication or broadcasting of the name of a person who has been convicted of a serious children's indictable offence if the publication or broadcasting is authorised by a court under this section.
- (2) A court that sentences a person 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 person (whether or not the person consents or concurs).
- (3) In determining whether to make such an order, a court is to have regard to the following matters—
- (a) the level of seriousness of the offence concerned,
  - (b) the effect of the offence on any victim of the offence and (in the case of an offence that resulted in the death of the victim) the effect of the offence on the victim's family,
  - (c) the weight to be given to general deterrence,
  - (d) the subjective features of the offender,
  - (e) the offender's prospects of rehabilitation,
  - (f) such other matters as the court considers relevant having regard to the interests of justice.
- (4) A court that makes an order under this section must indicate to the person, and make a record of, its reasons for doing so.

**15D Exception for publication or broadcasting with consent**

- (1) This Division does not prohibit the publication or broadcasting of the name of a person—
  - (a) in the case of a person who is under the age of 16 years at the time of publication or broadcasting—with the consent of the court concerned, or
  - (b) in the case of a person who is of or above the age of 16 years at the time of publication or broadcasting—with the consent of the person.
- (2) A court is not to give consent under this section except with the concurrence of the child or (if the child is incapable of giving concurrence) unless the court is of the opinion that it is in the public interest that consent be given.
- (3) A child who is of or above the age of 16 years cannot give consent for the purposes of this section unless the consent is given in the presence of an Australian legal practitioner of the child's own choosing.

**15E Exception where child deceased**

- (1) This Division does not prohibit the publication or broadcasting of the name of a deceased child with the consent of a senior available next of kin of the child.
- (2) A person must not, as a senior available next of kin, give consent to the publication or broadcasting of the name of a deceased child unless it appears to the person, after making such inquiries as are reasonable in the circumstances, that no other senior available next of kin objects to the publication or broadcasting of the name.
- (3) In addition, in considering whether to give consent to the publication or broadcasting of the name of a deceased child when the publication or broadcasting of the name of a brother or sister of the deceased child is prohibited under section 15A (1) (e), a senior available next of kin must—
  - (a) make such inquiries as are reasonable in the circumstances to obtain the views of that brother or sister regarding the publication or broadcasting of the name of the deceased child, and
  - (b) take into account the impact of such a publication or broadcasting on that brother or sister.
- (4) A senior available next of kin who is charged with, or is convicted of, an offence to which the criminal proceedings concerned relate cannot give consent, or object, to the publication or broadcasting of the name of a deceased child as referred to in this section.
- (5) If there is no senior available next of kin who can give consent to the publication or broadcasting of a deceased child's name (whether or not as a result of subsection (4)),

the court concerned can give that consent if satisfied that the public interest so requires.

- (6) In this section, **senior available next of kin** of a deceased child means—
- (a) a parent of the child, or
  - (b) if the parents of the child are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities to the child—
    - (i) a person who, immediately before the death of the child, had parental responsibility (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*) for the child, or
    - (ii) in the case of a child who was in the care of the Director-General of the Department of Human Services immediately before his or her death—the Director-General.

#### **15F Exception for traffic offences not dealt with by Children’s Court**

This Division does not apply to criminal proceedings in respect of a traffic offence if the proceedings are held before a court other than the Children’s Court.

#### **15G Functions of court officials not affected**

This Division does not apply to anything done by a person in the proper exercise of official functions as a member of staff of a registry or other office of a court in connection with the conduct and determination of criminal proceedings.

### **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.

(1A) In determining whether a person is to be dealt with according to law or in accordance with Division 4 of Part 3, a court must have regard to the following matters—

- (a) the seriousness of the indictable offence concerned,
- (b) the nature of the indictable offence concerned,
- (c) the age and maturity of the person at the time of the offence and at the time of sentencing,
- (d) the seriousness, nature and number of any prior offences committed by the person,
- (e) such other matters as the court considers relevant.

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

## **19 Court may direct imprisonment to be served as a juvenile offender**

(1) If a court sentences a person under 21 years of age to whom this Division applies to imprisonment in respect of an indictable offence, the court may, subject to this section, make an order directing that the whole or any part of the term of the sentence of imprisonment be served as a juvenile offender.

### **Note 1—**

The effect of such an order is that the person to whom the order relates will be committed to a detention centre (see subsection (6)). There he or she will be detained as specified in the order. In certain circumstances, he or she may subsequently be transferred to a correctional centre pursuant to an order under section 28 of the *Children (Detention Centres) Act 1987*.

### **Note 2—**

Section 9A of the *Children (Detention Centres) Act 1987* provides that persons who are 18 years of age or older are not to be detained in a detention centre in certain circumstances.

- (1A) In the case of a person of or above the age of 18 years who is serving, or has previously served, the whole or any part of a term of imprisonment in a correctional centre, such an order may not be made unless the court decides that there are special circumstances justifying detention of the person as a juvenile offender.
- (2) A person is not eligible to serve a sentence of imprisonment as a juvenile offender after the person has attained the age of 21 years, unless—
  - (a) in the case of a sentence for which a non-parole period has been set—the non-parole period will end within 6 months after the person has attained that age, or
  - (b) in the case of a sentence for which a non-parole period has not been set—the term of the sentence of imprisonment will end within 6 months after the person has attained that age.
- (3) A person who is sentenced to imprisonment in respect of a serious children’s indictable offence is not eligible to serve a sentence of imprisonment as a juvenile offender after the person has attained the age of 18 years, unless—
  - (a) the sentencing court is satisfied that there are special circumstances justifying detention of the person as a juvenile offender after that age, or
  - (b) in the case of a sentence for which a non-parole period has been set—the non-parole period will end within 6 months after the person has attained that age, or
  - (c) in the case of a sentence for which a non-parole period has not been set—the term of the sentence of imprisonment will end within 6 months after the person has attained that age.

This subsection is subject to subsection (2).

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

- (4A) In particular, a finding of special circumstances may not be made simply because of

the person's youth or simply because the non-parole period of the person's sentence will expire while the person is still eligible to serve the sentence as a juvenile offender.

- (4B) A court that makes a finding of special circumstances must make a record of its reasons for making that finding in the particular case.
- (5) A person who is subject to an order under this section that ceases or ceased to apply on the person attaining the age of 18 years may apply to the sentencing court for a further order under this section. Any such application requires the leave of the court.
- (6) The warrant of commitment that is issued under section 62 of the *Crimes (Sentencing Procedure) Act 1999* in relation to a sentence of imprisonment the subject of an order under this section—
- (a) must indicate that the sentence is the subject of such an order, and
  - (b) must specify how much of the sentence is to be served as a juvenile offender, and
  - (c) must, despite the provisions of that section, commit the person to whom it relates to a detention centre.
- (7) Nothing in this section, or in any order under this section, limits the operation of section 9A or 28 of the *Children (Detention Centres) Act 1987*.
- (8) In this section—

**correctional centre** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

## **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 2013*, 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 3 of the *Crimes (Appeal and Review) Act 2001*, 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 [Criminal Procedure Act 1986](#) and other Acts**

- (1) Subject to Part 2 and to the rules of the Children's Court, any Act or other law relating to the functions of the Local Court or Magistrates 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 provisions of the [Criminal Procedure Act 1986](#) that apply to the Local Court and any criminal proceedings before the Local Court apply to the Children's Court and any criminal proceedings before the Children's Court.
- (2A) Despite subsection (2), section 211A of the [Criminal Procedure Act 1986](#) does not apply in respect of criminal proceedings before the Children's Court.
- (2B) Despite subsection (2) (and subject to Divisions 3, 3AA and 3A), Part 2 of Chapter 3 of the [Criminal Procedure Act 1986](#) does not apply to indictable offences that are not serious children's indictable offences.



**Note—**

Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*, which deals with committal proceedings, applies to serious children's indictable offences.

- (3) If this Part and any Act or other law applied by this section (other than the *Bail Act 2013*) 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 Act 2013* 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 2013](#),

(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 if the Children's Court is of the opinion that it is in the interests of justice to do so.

(3) (Repealed)

(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 make a bail decision under the [Bail Act 2013](#) 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 must not be dealt with summarily but are to be dealt with as committal proceedings in accordance with Division 3A.

(2A) If a person makes a request under subsection (2) before the close of the case for the prosecution, the proceedings are to continue as summary proceedings for the purpose only of completing all of the evidence for the prosecution.

(2B) The Children's Court must discharge a person who makes a request under subsection (2) in relation to an offence if it is of the opinion, after all the evidence for the prosecution has been taken, and having regard to all the evidence before the Court, that the evidence is not capable of satisfying a reasonable jury beyond reasonable doubt that the person has committed an indictable offence.

(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 must not be dealt with summarily but are to be dealt with as committal proceedings in accordance with Division 3A.

(3A) Notwithstanding subsection (1), if a person is charged before the Children's Court with a child sexual assault offence, and the prosecution requests that the proceedings

be dealt with according to law (and not summarily) in accordance with Division 3AA, the proceedings are to be dealt with as provided for by that Division.

(3B) If the Children's Court states that it is of the opinion, after taking evidence in accordance with Division 3AA—

(a) 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 accused person has committed a child sexual assault offence, and

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

the proceedings for the child sexual assault offence must not be dealt with summarily but are to be dealt with as committal proceedings in accordance with Division 3A.

(3C) If the Children's Court, after taking evidence in accordance with Division 3AA, does not form the opinion referred to in subsection (3B)—

(a) the proceedings for the child sexual assault offence must be dealt with summarily (subject to any other exceptions provided for by this section), and

(b) subsection (3) ceases to apply to the child sexual assault offence.

(4) If, in the circumstances referred to in subsection (3) or (3B), 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 (including any background report of a kind referred to in section 25), the charge may not properly be disposed of in a summary manner,

the proceedings for the offence must not be dealt with summarily but are to be dealt with as committal proceedings in accordance with section 31H.

(6) Notwithstanding subsection (1), when the Children's Court commits to another court for trial or sentence a person who is charged with an indictable offence or a serious children's indictable offence (the **principal indictable offence**)—

(a) the prosecutor must, if the person has been charged with any back up or related offence to the principal indictable offence, produce to the Children's Court a certificate specifying the back up or related offence, and

(b) the Children's Court may transfer to the other court proceedings for any such back up or related offence.

(7) If a back up or related offence is transferred to another court under subsection (6), the proceedings for such an offence are to be dealt with in accordance with sections 167-169 of the *Criminal Procedure Act 1986*. For that purpose, a reference in those sections to the Local Court is to be construed as a reference to the Children's Court.

(8) In this section—

**back up offence**, in relation to a principal indictable offence, means an offence—

(a) that is a summary offence or an indictable offence that is capable of being dealt with summarily by the Children's Court, and

(b) all the elements of which are elements that are necessary to constitute the principal indictable offence, and

(c) that is to be prosecuted on the same facts as the principal indictable offence.

**child sexual assault offence** has the same meaning as it has in Division 3AA.

**related offence**, in relation to a principal indictable offence, means an offence—

(a) that is a summary offence or an indictable offence that is capable of being dealt with summarily by the Children's Court, and

(b) that arises from substantially the same circumstances as those from which the principal indictable offence has arisen,

but does not include a back up offence.

## **Division 3AA Special provisions—child sexual assault offences**

### **31AA Application of Division**

(1) This Division applies to proceedings in which a person (an **accused person**) is charged before the Children's Court with a child sexual assault offence.

(2) To avoid doubt, this Division extends to proceedings in which a person is charged before the Children's Court with a child sexual assault offence and one or more other offences (other than a serious children's indictable offence) against the same complainant.

(3) In this Division—

**child sexual assault offence** means a child sexual assault offence within the meaning of section 83 of the *Criminal Procedure Act 1986* (other than a serious children's indictable offence) in respect of which the complainant—

- (a) was under the age of 16 years on the date of the alleged offence or at the beginning of the period during which the offence is alleged to have been committed, or
- (b) in the case of an offence against section 73 or 73A of the *Crimes Act 1900*, was under the age of 18 years on the date of the alleged offence.

**complainant** means a person, or any of the persons, against whom an offence is alleged to have been committed and includes—

- (a) in relation to an offence under section 80E of the *Crimes Act 1900*, a person who is alleged to have been the subject of sexual servitude, and
- (b) in relation to an offence under section 91D, 91E or 91F of the *Crimes Act 1900*, a person who is alleged to have been the subject of child prostitution, and
- (c) in relation to an offence under section 91G of the *Crimes Act 1900*, a person who is alleged to have been used for the production of child abuse material.

### **31AB Prosecution may request that proceedings be dealt with on indictment**

- (1) The prosecution may request that proceedings for a child sexual assault offence be dealt with according to law (and not summarily)—
  - (a) on or before the first return date for service of a brief of evidence in the proceedings, or
  - (b) on or before a later date nominated by the Children’s Court, if the Children’s Court is satisfied that it is in the interests of justice to allow the request to be made later than would otherwise be required under paragraph (a).
- (2) If the request is duly made, the Children’s Court is to take evidence for the prosecution and the accused person in accordance with this Division.

### **31AC Taking of prosecution evidence**

- (1) Evidence for the prosecution must be given by written statements that are admissible as evidence.
- (2) A statement is not admissible as evidence unless any requirements specified for the statement by or under this Division are complied with in relation to the statement and any associated exhibits or documents.
- (3) A statement that is not admissible as evidence under this section may be admitted as evidence if otherwise admissible in accordance with any rule or law of evidence.
- (4) A statement sought to be admitted for the purposes of this Division must be served on the accused person on or before the day set by the Children’s Court for that purpose.

- (5) The Children's Court must refuse to admit a statement sought to be tendered under this Division if any requirement specified for the statement by or under this Division, or under subsection (2), has not been complied with by the prosecutor.
- (6) Despite subsection (5), the Children's Court may admit the statement sought to be tendered if the Court is satisfied that—
  - (a) the non-compliance is trivial in nature, or
  - (b) there are other good reasons to excuse the non-compliance, and admit the statement, in the circumstances of the case.
- (7) Without limiting any other power to adjourn proceedings, the Children's Court may grant one or more adjournments, if it appears to the Court to be just and reasonable to do so, if any requirement specified for the statement by or under this Division, or under subsection (2), has not been complied with by the prosecutor. For that purpose, the Children's Court may extend the time for service of a statement.

**31AD Prosecution witness may be directed to attend in limited circumstances**

- (1) The Children's Court may, on the application of the accused person or the prosecutor, direct the attendance of a person who made a written statement that the prosecution intends to tender as evidence.
- (2) The Children's Court must direct the attendance of a person, other than a complainant, if an application is made by the accused person or the prosecutor and the other party consents to the direction.
- (3) In the case of any other application, the Children's Court may direct the attendance of a person other than a complainant only if satisfied that there are substantial reasons why the witness should, in the interests of justice, attend to give oral evidence.
- (4) The Children's Court may direct the attendance of a complainant only if satisfied that there are special reasons why the complainant should, in the interests of justice, attend to give oral evidence.
- (5) Subsection (4) applies whether or not the parties to the proceedings consent to the attendance of the complainant.
- (6) The Children's Court may hold a hearing to determine an application for a direction under this section and may require the accused person or the prosecutor to make submissions in relation to the application.
- (7) For the purposes of determining whether to give a direction, the Children's Court may consider any material (whether or not the material is in a form required for it to be admissible as evidence).
- (8) A direction given on the application of the accused person or the prosecutor may be

withdrawn only—

- (a) on the application, or with the consent, of the accused person, or
- (b) on the application of the prosecutor, if the accused person fails to appear on a day on which a person has been directed to give evidence and the Children's Court is satisfied that it is in the interests of justice in the circumstances of the case.

**31AE Evidence of witness directed to attend**

- (1) The evidence of a person who is directed to attend a hearing under this Division is to be given orally.
- (2) The person may be examined by the prosecutor.
- (3) The person may be cross-examined by the accused person and by the prosecutor.
- (4) The Children's Court must not allow a person to be cross-examined in respect of matters that were not the basis of the reasons for giving the direction, unless the Children's Court is satisfied that—
  - (a) if the person is a complainant—there are special reasons why the person should, in the interests of justice, be cross-examined in respect of those matters, or
  - (b) in any other case—there are substantial reasons why the person should, in the interests of justice, be cross-examined in respect of those matters.

**31AF Taking of evidence of accused person**

- (1) The Children's Court must give the accused person an opportunity to give evidence under this Division and to call any witness on the accused person's behalf.
- (2) An accused person may make full answer and defence. An accused person may give evidence and may examine and cross-examine the witnesses giving evidence for the accused person or for the prosecution.
- (3) This section does not confer on an accused person any entitlement to require the attendance of, or to examine or cross-examine, a prosecution witness or a complainant except in the circumstances (if any) permitted by section 31AD or 31AE.

**31AG Application of [Criminal Procedure Act 1986](#)**

- (1) The following provisions of the [Criminal Procedure Act 1986](#), and any regulations under those provisions, apply in relation to the taking of evidence under this Division in the same way as they apply to committal proceedings, subject to any modifications made by this Division and the regulations under this Act—
  - (a) Division 6 of Part 2 of Chapter 3 (except sections 82–84),
  - (b) Part 3A of Chapter 6,



- (c) any other provisions prescribed by the regulations under this Act.
- (2) Except as provided by subsection (1), this Division does not affect the application of any provisions of the *Criminal Procedure Act 1986* that apply to criminal proceedings before the Children's Court under section 27.
- (3) In particular, Division 1 of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986* applies to the taking of evidence under this Division.

### **31AH Regulations**

- (1) The regulations may make further provision for or with respect to this Division, including—
  - (a) the application of this Division to, and procedure to be followed by the Children's Court in, proceedings in which a person is charged with a child sexual assault offence and one or more other offences, and
  - (b) the taking of evidence under this Division.
- (2) The regulations may make provision for or with respect to a determination of substantial reasons or special reasons under a provision of this Division.

## **Division 3A Committal proceedings**

### **31A Committal proceedings for offences**

- (1) This Division applies to an offence with which a person (an **accused person**) is charged if—
  - (a) the accused person made a request under section 31 (2) and the Children's Court did not discharge the person under section 31 (2B) after all the prosecution evidence was taken, or
  - (b) the Children's Court forms an opinion about the accused person under section 31 (3) (b) or (3B).
- (2) The Children's Court must conduct committal proceedings in respect of the offence in accordance with this Division.

#### **Note—**

Section 31H applies to a person about whom the Children's Court forms an opinion under section 31 (5).

### **31B Evidence in committal proceedings**

- (1) The Children's Court must give the accused person an opportunity to give evidence in the committal proceedings or to call any witness on the accused person's behalf.
- (2) The Children's Court must give an accused person a warning before giving the

accused person an opportunity to answer the charge.

- (3) An accused person may make full answer and defence. An accused person may give evidence and may examine and cross-examine the witnesses giving evidence for the accused person or for the prosecution, respectively.
- (4) The Children's Court may end the examination or cross-examination on any particular matter of any witness giving evidence in the committal proceedings if the Court is satisfied that further examination or cross-examination on the matter will not help the Court to make a determination under subsection (6).
- (5) If the accused person is not present, the Children's Court may make a decision under subsection (6) without complying with subsection (3).
- (6) The Children's Court must consider all the prosecution evidence given under section 31, Division 3AA or section 31C and any defence evidence and determine whether or not in its opinion, having regard to all the evidence before the Court, there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence.

**Note—**

A matter is not referred for dealing with under this Division until after all prosecution evidence has been taken (see section 31 (2A) and (3)). Section 31AB also requires prosecution evidence to be taken before a child sexual assault offence is referred to be dealt with under this Division.

- (7) The Children's Court may not exclude evidence on any of the grounds set out in section 90 (Discretion to exclude admissions) or Part 3.11 (Discretionary and mandatory exclusions) of the [Evidence Act 1995](#).

**31C Statements may be admitted as evidence**

- (1) For the purposes of section 31B (6), the Children's Court may, on the application of the prosecutor, consider additional evidence for the prosecution that is tendered in the form of a statement if—
  - (a) the statement was included in the brief of evidence provided by the prosecutor for the purposes of Division 2 of Part 2 of Chapter 4 of the [Criminal Procedure Act 1986](#) (as applied by section 27 of this Act), or
  - (b) the statement is tendered by the prosecutor after the conclusion of the prosecution's case under section 31 and is a written statement or a statement of another kind that is permitted to be tendered in committal proceedings under Division 6 of Part 2 of Chapter 3 of the [Criminal Procedure Act 1986](#).
- (2) A statement that is so tendered is admissible as evidence for the purposes of this section to the same extent as if it were oral evidence to the like effect given under this Division by the same person.

- (3) Any document or other thing identified in any statement admitted as evidence under this Division is, if the document or other thing is produced as an exhibit in the committal proceedings, to be treated as if it had been identified before the Children's Court by the person who made the statement.
- (4) This section does not operate to make a statement admissible if it is not admissible because of another provision made by or under this Division.

### **31D Statements must comply with requirements**

- (1) A statement is not admissible as evidence for the purposes of this Division unless any requirements specified for the statement by or under this Division, or under subsection (2), are complied with in relation to the statement and any associated exhibits or documents.
- (2) Part 3A of Chapter 6 of the *Criminal Procedure Act 1986* applies to or in respect of a statement tendered for the purposes of this Division under section 31C (1) (b).
- (3) A statement that is not admissible as evidence under this section may nevertheless be admitted as evidence if otherwise admissible in accordance with any rule or law of evidence.
- (4) A statement sought to be admitted for the purposes of this Division must be served on the accused person on or before the day set by the Children's Court for that purpose.
- (5) The Children's Court must refuse to admit a statement sought to be tendered under this Part if any requirement specified for the statement by or under this Division, or under subsection (2), has not been complied with by the prosecutor.
- (6) Despite subsection (5), the Children's Court may admit the statement sought to be tendered if the Court is satisfied that—
  - (a) the non-compliance is trivial in nature, or
  - (b) there are other good reasons to excuse the non-compliance, and admit the statement, in the circumstances of the case.

### **31E Children's Court may set aside requirements for statements**

- (1) In any committal proceedings, the Children's Court may dispense with all or any of the following requirements relating to statements or exhibits—
  - (a) service of documents on the accused person,
  - (b) provision to the accused person of a reasonable opportunity to inspect proposed exhibits,
  - (c) specification of the age of the person who made a statement,

(d) any requirement specified by the regulations under this Division or Part 3A of Chapter 6 of the *Criminal Procedure Act 1986*, if the regulations do not prohibit the Court from dispensing with the requirement.

(2) A requirement may be dispensed with under this section only on an application by the accused person or with the consent of the accused person.

**Note—**

Some of these requirements are imposed because of the application of Part 3A of Chapter 6 of the *Criminal Procedure Act 1986* to certain statements.

**31F Decision about committal or discharge**

(1) If the Children’s Court is of the opinion that there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence, the Court must commit the accused person for trial.

(2) If the Children’s Court is not of the opinion that there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence, the Court must immediately order the accused person to be discharged in relation to the offence.

(3) Despite any requirement of section 31B, the Children’s Court may, at any time, on the application of the accused person, and with the consent of the prosecutor, commit the accused person for trial.

**31G Guilty pleas**

(1) An accused person may at any time in committal proceedings under this Division plead guilty to the offence concerned.

(2) The Children’s Court may accept or reject the guilty plea.

(3) Rejection of a guilty plea does not prevent an accused person from pleading guilty at a later stage in the proceedings.

(4) If the guilty plea is rejected, the committal proceedings continue as if the accused person had not pleaded guilty.

**31H Guilty pleas and committal for sentence**

(1) This section applies to—

(a) an accused person whose guilty plea is accepted under section 31G, and

(b) a person charged with an offence who pleads guilty to an offence and about whom the Children’s Court forms an opinion under section 31 (5) (c).

(2) The Children’s Court must commit the person to the District Court or the Supreme

Court for sentence.

### **31I Committal may be set aside by Children's Court**

- (1) An accused person who was not present and, if not present, was not represented when committed for trial may apply to the Children's Court to have an order for the accused person's committal for trial set aside.
- (2) The application must be made before the presentation or filing of an indictment against the accused person.
- (3) The Children's Court may set aside the order for committal for trial and any associated warrant to commit the accused person if the Court is satisfied that good and proper reason is shown for the absence of the accused person or a representative of the accused person and that it is in the interests of justice to do so.

### **31J Application of procedural provisions**

Section 58 and Divisions 8–10 of Part 2 of Chapter 3 of the [Criminal Procedure Act 1986](#) apply to or in respect of proceedings under this Division in the same way as they apply to or in respect of proceedings under that Part.

### **31K False statements or representations**

- (1) A person who made a written statement tendered in evidence in proceedings under this Division is guilty of an offence if the statement contains any matter—
  - (a) that, at the time the statement was made, the person knew to be false, or did not believe to be true, in any material respect, and
  - (b) that was inserted or caused to be inserted by the person in the statement.

Maximum penalty—100 penalty units or imprisonment for 5 years, or both.

- (2) A person who made a representation given in evidence under this Division in the form of a recorded statement is guilty of an offence if the representation contains any matter that, at the time the representation was made, the person knew to be false, or did not believe to be true, in any material respect.

Maximum penalty—100 penalty units or imprisonment for 5 years, or both.

### **31L Regulations**

Regulations may be made for or with respect to the following matters—

- (a) requiring the Children's Court to give an explanation to an accused person of any matter under this Division,
- (b) without limiting paragraph (a), requirements for statements or warnings where the accused person is not represented by a legal practitioner,

- (c) requirements for statements used for the purposes of this Division,
- (d) the form of any warning required to be given under this Division,
- (e) service of a written or other statement and copies of proposed exhibits identified in the statement (or a notice relating to inspection of them) on the accused person by the prosecutor.

## **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—
    - (i) directing that the charge be dismissed (in which case the Court may also, if it thinks fit, administer a caution to the person), or
    - (ii) discharging the person on condition that the person enters into a good behaviour bond for such period of time, not exceeding 2 years, as it thinks fit,
  - (b) it may make an order directing the person to enter into a good behaviour bond for a specified period, not exceeding 2 years,
  - (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 (not later than 12 months from the date of the finding of guilt) for any of the following purposes (but only if bail for the offence is or has been granted or dispensed with under the [Bail Act 2013](#))—
    - (i) for the purpose of assessing the person's capacity and prospects for

rehabilitation,

(ii) for the purpose of allowing the person to demonstrate that rehabilitation has taken place,

(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,

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

(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,

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

(g) it may, subject to the provisions of the *Crimes (Sentencing Procedure) Act 1999*, make an order committing the person for such period of time (not exceeding 2 years) as it thinks fit—

(i) in the case of a person who is under the age of 21 years, to the control of the Minister administering the *Children (Detention Centres) Act 1987*, or

(ii) in the case of a person who is of or above the age of 21 years, to the control of the Minister administering the *Crimes (Administration of Sentences) Act 1999*.

(1A) A good behaviour bond imposed under this section—

(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 will be of good behaviour, 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.

(1AA) Before making an order imposing a fine on a child, the Children's Court is to

consider the age of the child and the following matters, where information is available in relation to those matters—

- (a) the child's ability to pay the fine,
- (b) the potential impact of the fine on the rehabilitation of the child.

(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.

(1C) If the Children's Court makes an order under subsection (1) (g) (ii) committing a person to the control of the Minister administering the *Crimes (Administration of Sentences) Act 1999*, the period for which the person is committed is taken to be a sentence of imprisonment for the purposes of that Act.

(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)-(f1).

(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 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 43 of the *Criminal Procedure Act 1986*, or

(d) to make a community clean up order in respect of a fine imposed for an offence under the *Graffiti Control Act 2008*.

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

**Note—**

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

(7) The functions of a juvenile justice officer in relation to the supervision of a person who has entered into a good behaviour bond or been released on probation under this section may be exercised by a community corrections officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), and the functions of a community corrections officer in relation to the supervision of any such person may be exercised by a juvenile justice officer, in accordance with any arrangements between Juvenile Justice NSW and Corrective Services NSW.

**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 or other control orders expires.

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

(5) Subsections (2) and (3) are subject to section 57 of the *Crimes (Sentencing Procedure) Act 1999*, as applied by section 33C.

(6) This section does not apply to a control order to which section 33AA applies.

**33AA Cumulative or concurrent orders—assault on juvenile justice officers**

- (1) In this section, **control order** means an order referred to in section 33 (1) (g).
- (2) This section applies to a control order made by the Children’s Court (the **new control order**) if—
  - (a) the order is made in relation to an offence involving an assault, or any other offence against the person, on a juvenile justice officer committed by a person while the person was a person subject to control, and
  - (b) the person is subject to one or more other control orders (an **existing control order**) at the time the new control order is made.
- (3) The period for which the person is required to be detained under the new control order commences when the period for which the person is required to be detained under an existing control order or, if there is more than one, the last of them expires, unless the Children’s Court directs that the period is to commence sooner.
- (4) Such a direction may not be given unless the Children’s Court is of the opinion that there are special circumstances justifying such a direction.
- (5) The Children’s Court must not make a new control order, or give such a direction, if the order or direction would have the effect of requiring a person to be detained for a continuous period of more than 3 years (taking into account any other control orders relating to the person).

**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**

- (1) Subject to this Act and section 27(4A) of the *Crimes (Sentencing Procedure) Act 1999*, 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 the 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, and
  - (c) a reference in those provisions to an escape from lawful custody committed by the offender while an inmate of a correctional centre included a reference to an escape from lawful custody committed by the offender while a detainee of a detention centre, and
  - (d) a reference in those provisions to a good behaviour bond, community correction order or conditional release order were a reference to a good behaviour bond imposed under section 33.
- (2) (Repealed)

**Note—**

Division 1A of Part 4 of the *Crimes (Sentencing Procedure) Act 1999* (which provides for standard non-parole periods) does not apply in respect of offences committed by children.

### **33D Non-association and place restriction orders**

- (1) This section applies to any offence that is punishable by imprisonment for 6 months or more, whether or not the offence is also punishable by fine.
- (2) When sentencing a person for an offence to which this section applies, a court that has made an order under section 33 (subsection (1) (a) (i), (c1) and (c2) excepted) may make either or both of the following orders in respect of the person—
  - (a) a non-association order, being an order prohibiting the person from associating with a specified person for a specified term, or
  - (b) a place restriction order, being an order prohibiting the person from frequenting or visiting a specified place or district for a specified term,if it is satisfied that it is reasonably necessary to do so to ensure that the person does not commit any further offences to which this section applies.
- (3) An order under subsection (2) (a) is to be one of the following—
  - (a) a limited non-association order, being an order prohibiting the person from being

in company with a specified person except at the times or in such circumstances (if any) as are specified,

(b) an unlimited non-association order, being an order prohibiting the person—

(i) from being in company with a specified person, and

(ii) from communicating with that person by any means.

(3A) An order under subsection (2) (b) is to be one of the following—

(a) a limited place restriction order, being an order prohibiting the person from frequenting or visiting a specified place or district except at the times or in such circumstances (if any) as are specified,

(b) an unlimited place restriction order, being an order prohibiting the person from frequenting or visiting a specified place or district at any time or in any circumstance.

(4) The term of an order under this section is not limited by any term of detention imposed for the offence, but must not exceed 12 months.

(5) This section does not limit the kinds of prohibition or restriction that may be imposed on a person by means of any other order or direction under this or any other Act (such as an order under section 33 providing for a person to enter into a good behaviour bond or releasing a person on probation), so that such an order or direction may include prohibitions of the kind referred to in subsections (2) and (3).

(6) Part 8A of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of a non-association order or place restriction order under this section in the same way as it applies to and in respect of a non-association order or place restriction order under that Act.

(7) In the application of section 100G of the *Crimes (Sentencing Procedure) Act 1999* to or in respect of a non-association order or place restriction order under this section, a reference in that section to the Local Court is to be read as a reference to the Children's Court.

(8) In this section, **associate with** means—

(a) to be in company with, or

(b) to communicate with by any means (including post, facsimile, telephone and email).

### **34 Restrictions on the imposition of control orders etc**

(1) An order shall not be made under section 33 (1) (f), (f1) 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)–(f1).

### **36 Compensation**

- (1) If the Children’s Court makes an order under a paragraph of section 33 (1) it may, under section 94 or 97 of the *Victims Rights and Support Act 2013*, 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—
  - (a) the amount that is equivalent to 10 penalty units (in the case of a person who is under the age of 16 years at the time the order is made), or
  - (b) the amount that is equivalent to 20 penalty units (in any other case).

### **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 sections 32 and 38A of the *Children (Detention Centres) Act 1987*.

### **38 Destruction of photographs, finger-prints etc**

- (1) If the Children’s Court finds a person not guilty of an offence to which this Division applies, or finds a person guilty of such an offence but makes an order dismissing the charge under section 33 (1) (a) (i), the Children’s Court is to make an order that requires any photographs, finger-prints and palm-prints, and any other prescribed

records (other than records of the Children's Court), relating to the offence to be destroyed.

- (2) If the Children's Court finds a person guilty of an offence to which this Division applies and makes any other order in respect of the person under section 33, it may, if it is of the opinion that the circumstances of the case justify its doing so, make an order (whether on the application of the person or otherwise) that requires any photographs, finger-prints and palm-prints, and any other prescribed records (other than records of the Children's Court), relating to the offence to be destroyed.
- (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 under section 33 that provides for a person to enter into a good behaviour bond or that releases a person on probation, 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 under section 33 that provides for a person to enter into a good behaviour bond or that releases a person on probation.

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

- (1) If an authorised officer or a member of the police force informs an authorised justice 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 court attendance notice 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—the Local Court, or
  - (d) if the authorised justice is satisfied that the person is unlikely to appear in answer to a court attendance notice—may issue a warrant directing the arrest of the person,

as the authorised justice considers appropriate in the circumstances of the case.

- (1A) Without limiting subsection (1), the Children's Court (in the case of a person who is under the age of 21 years) or the Local Court (in the case of a person who is of or above the age of 21 years) may call on a person to appear before it if the Court suspects that the 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, 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.

(1B) If the person fails to appear after being called to do so under subsection (1A), the Court may—

(a) issue a warrant for the person's arrest, or

(b) authorise an authorised officer to issue a warrant for the person's arrest.

(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) or (1B), 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—the 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 the 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 the order under section 33 (1) (g), as if the order were a sentence of imprisonment being imposed following the revocation of the good behaviour bond, and section 24 of that Act applies in relation to the setting of a non-parole period under that Part.
  - (c) (Repealed)
- (4) The conditions of any such good behaviour bond may be varied under section 40 or in proceedings taken under section 41.

#### **42 Action may be taken after good behaviour bond has expired**

Action may be taken under this Part in relation to a good behaviour bond even if the term of the bond has expired, but in respect only of matters arising during the term of the bond.

#### **42A Children's Court may make orders regarding court costs**

- (1) The Children's Court may, at the end of summary proceedings in which a person is found guilty of an offence, order that the person pay court costs.
- (2) Court costs ordered to be paid under this section are in addition to, and do not form part of, any pecuniary penalty imposed in respect of the offence.
- (3) The court costs are to be paid to the registrar of the court. The registrar is to pay the costs to the prosecutor if court costs have been paid by the prosecutor in respect of the proceedings.
- (4) The amount of court costs ordered to be paid under this section cannot exceed the amount of the court costs levy that would be payable under section 211A of the *Criminal Procedure Act 1986* if that section applied to the offence.
- (5) An order for the payment of court costs by a person may be included in any order made under section 33 in relation to the person.
- (6) This section applies to all summary proceedings before the Children's Court, including proceedings conducted in the absence of the accused person.
- (7) This section applies to summary proceedings before the Local Court relating to a traffic offence in which a person is dealt with under Division 4 (by virtue of section 210 of the *Criminal Procedure Act 1986*) in the same way as it applies to proceedings before the Children's Court.
- (8) This section does not apply to a finding of guilt that the regulations exempt from the operation of this section.
- (9) An order made by a court under this section for the payment of costs is taken to be a fine within the meaning of the *Fines Act 1996*.

### **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 4A**

#### **48A-48Y (Repealed)**

### **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 the Local Court.
- (2) Proceedings for an offence against section 15A may be dealt with by the Supreme Court in its summary jurisdiction.
- (3) If proceedings for an offence against section 15A are brought before the Local Court, the maximum penalty that the Local Court may impose on a corporation is 50 penalty units.

#### **50 Act is generally subject to [Bail Act 2013](#)**

The [Bail Act 2013](#) 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 2013](#), 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 registrar 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 Australian legal practitioner, 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 that provide for a person to enter into a good behaviour bond or release a person on probation, and
  - (b) the keeping of records for the purposes of this Act, and
  - (c) the making of parole orders at the time of sentencing a person, including conditions imposed on a parole order.
- (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 any Act that amends this Act.
- (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.

## **Part 7 Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001**

### **10 Application of amendments**

Section 19, as substituted by the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*—

(a) applies to persons who are sentenced after the commencement of that Act, and

(b) does not affect any order made before the commencement of that Act.

## **Part 8 Provisions consequent on enactment of Justice Legislation**



## **Amendment (Non-association and Place Restriction) Act 2001**

### **11 Application of section 33D**

Section 33D, as inserted by the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*, does not apply to any offence committed before the commencement of that section.

## **Part 9 Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002**

### **12 Offences to which amending Act applies**

- (1) The amendments made to this Act by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* do not apply to offences committed before the commencement of the amendments.
- (2) Part 7 of Schedule 2 to the *Crimes (Sentencing Procedure) Act 1999* also has effect for the purposes of the application of the *Crimes (Sentencing Procedure) Act 1999* to offences dealt with under Division 4 of Part 3 of this Act.

## **Part 10 Provision consequent on enactment of Crimes Legislation Amendment Act 2002**

### **13 Application of section 33AA**

Section 33AA, as inserted by the *Crimes Legislation Amendment Act 2002*, applies only to a new control order (within the meaning of that section) made in relation to an offence committed after the commencement of that section, and so applies whether or not the existing control order (within the meaning of that section) was made before the commencement of that section.

## **Part 11 Provision consequent on enactment of Crimes Legislation Amendment Act 2004**

### **14 Publication and broadcasting of names**

Section 11, as amended by the *Crimes Legislation Amendment Act 2004*, extends to proceedings commenced before the commencement of those amendments.

## **Part 12 Provisions consequent on enactment of Juvenile Offenders Legislation Amendment Act 2004**

### **15 Section 19 orders**

An order in force under section 19 (1), as in force immediately before its amendment by Schedule 1 [2] to the *Juvenile Offenders Legislation Amendment Act 2004*, is taken, on

that commencement, to be an order under that section, as so amended.

#### **16 Warrants of commitment**

Section 19 (6), as inserted by Schedule 1 [4] to the *Juvenile Offenders Legislation Amendment Act 2004*, does not apply to a warrant of commitment issued before the commencement of that subsection.

### **Part 13 Children (Criminal Proceedings) Amendment (Publication of Names) Act 2007**

#### **17 Publication and broadcasting of names**

Section 11, as amended by the *Children (Criminal Proceedings) Amendment (Publication of Names) Act 2007*, applies in relation to proceedings whether commenced before or after the commencement of that Act.

#### **18 Publication and broadcasting of names previously published or broadcast**

Section 11 does not apply to the publication or broadcast of the names of the following persons in connection with criminal proceedings—

- (a) the name of a person that had been published or broadcast before 21 December 2001 (the date on which that section was amended by the *Criminal Legislation Amendment Act 2001*), being a person who was not a child at the time of the publication or broadcast,
- (b) the name of a person that had been published or broadcast before 24 March 2004 (the date on which that section was amended by the *Crimes Legislation Amendment Act 2004*), being a person who was deceased at the time of the publication or broadcast.

### **Part 14 Children (Criminal Proceedings) Amendment Act 2008**

#### **19 Definition**

In this Part—

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

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

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

#### **21 Changes to penalty provisions**

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

otherwise provided by this clause.

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

## 22 Change to maximum amount of compensation

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

## Part 15 Children (Criminal Proceedings) Amendment (Youth Conduct Orders) Act 2008

### 23 Definition

In this Part—

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

### 24 Application of Part 4A to pre-commencement offences

Part 4A, as inserted by the amending Act, extends to a relevant offence (within the meaning of that Part) committed, or alleged to have been committed, by a child before the commencement of that Part, but only if the child is charged with the offence (within the meaning of that Part) after that commencement.

### 25 Exercise of certain powers between enactment and commencement of amending Act

The provisions of section 26 of the *Interpretation Act 1987* apply in relation to a power to make an instrument that is to be conferred by an uncommenced amendment to the *Children (Criminal Proceedings) Regulation 2005* made by the amending Act in the same way as they apply to powers to make instruments conferred by uncommenced amendments to Acts.

**Note—**

Section 26 of the *Interpretation Act 1987* enables a power to make instruments of a legislative or administrative character that is to be conferred by an enacted but uncommenced amendment to an Act to be exercised before the amendment commences. Any such instrument will have effect on the commencement of the amendment.

## Part 16 Courts Legislation Amendment Act 2010

### 26 Application of amendments to section 41

The amendments made to section 41 by the *Courts Legislation Amendment Act 2010* extend to a failure of a person of the kind referred to in section 41 (1A) (as inserted by that Act) occurring before the commencement of the amendments.

## Part 17 Courts and Crimes Legislation Further Amendment Act 2010

### 27 Definitions

In this Part—

**amending Act** means the *Courts and Crimes Legislation Further Amendment Act 2010*.

**commencement day** means the day on which Schedule 4.1 to the amending Act commences.

### 28 Application of amended Part 4A to pre-commencement offences

Part 4A of the Act and Part 2 of the *Children (Criminal Proceedings) Regulation 2005*, as amended by the amending Act, extend to a relevant offence (within the meaning of the amended Part 4A of the Act) committed, or alleged to have been committed, by a child before the commencement day, but only if—

- (a) the child has not yet been charged with the offence immediately before the commencement day, or
- (b) where the child was charged with the offence before the commencement day—the child has not yet—
  - (i) pleaded guilty to (or been found guilty of) the offence, or
  - (ii) had a penalty imposed by the Children’s Court for the offence.

### 29 Application of amended sections 48Q and 48R

- (1) Section 48Q (as amended by the amending Act) extends to youth conduct orders made before the commencement day that are revoked on or after that day.
- (2) Section 48R (as amended by the amending Act) extends to—
  - (a) any application made under that section that is pending immediately before the commencement day, and
  - (b) any application made under that section that is made on or after the

commencement day in relation to a final youth conduct order made before that day.

### **30 Application of amended section 48U**

Section 48U (as amended by the amending Act) extends to any information obtained before, on or after the commencement day in connection with the administration of the Anti-Social Behaviour Pilot Project (which was the previous name of the SCSF Program).

## **Part 18 Criminal Procedure Amendment (Court Costs Levy) Act 2013**

### **31 Application of amendments**

Sections 27 (2A) and 42A extend to proceedings commenced but not finally determined immediately before the commencement of those provisions.

## **Part 19 Provisions consequent on enactment of Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017**

### **32 Definitions**

In this Part—

**amending Act** means the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*.

**existing proceedings** means proceedings for an indictable offence commenced under this Act before the amendment of the former committal provisions by the amending Act.

**former committal provisions** means Divisions 2–5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* and Division 3 of Part 3 of this Act, as in force before the substitution or amendment of those provisions by the amending Act.

### **33 Existing proceedings**

The former committal provisions continue to apply to existing proceedings as if those provisions had not been amended by the amending Act.

### **34 Previous offences**

This Act, as amended by the amending Act, extends to proceedings for an offence committed before the amendment of Division 3 of Part 3 of this Act by the amending Act, if proceedings for the offence commenced on or after that amendment.

## **Part 20 Provision consequent on enactment of Crimes Legislation**

## **Amendment (Victims) Act 2018**

### **35 Application of amendments to proceedings**

An amendment made to this Act by the *Crimes Legislation Amendment (Victims) Act 2018* applies only to proceedings commenced after the commencement of the amendment.