

CONCURRENCE COPY

CRIMES (COMMUNITY WELFARE) AMENDMENT BILL, 1982

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Community Welfare Bill, 1982.

The objects of this Bill are—

- (a) to prohibit the taking of a photograph or the finger-prints or palm-prints of a child under the age of 14 years who is in custody for an offence punishable on indictment or summary conviction except in accordance with an order of the Children's Court or if it is not possible to apply to such a court within 72 hours after the child is taken into custody in accordance with an order of a Justice;
 - (b) to make provisions with respect to the destruction of photographs, finger-prints and palm-prints of a child against whom an alleged offence is not proved; and
 - (c) to provide that the powers conferred by sections 437 (1), 556A (1) and 558 (1) of the Crimes Act, 1900, do not extend to the Children's Court or to any other court exercising the powers of the Children's Court.
-

**CRIMES (COMMUNITY WELFARE) AMENDMENT
BILL, 1982**

No. , 1982.

A BILL FOR

An Act to amend the Crimes Act, 1900, with respect to the obtaining of identifying evidence with respect to children under the age of 14 years and to make other amendments to that Act consequent upon the enactment of the Community Welfare Act, 1982.

[MR K. J. STEWART—9 *March*, 1982.]

Crimes (Community Welfare) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Crimes (Community Welfare) Amendment Act, 1982".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Community Welfare Act, 1982.

Amendment of Act No. 40, 1900.

15 3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

20 (1) Section 19—

Omit "The provisions", insert instead "Except in the case of murder committed by a child, within the meaning of the Community Welfare Act, 1982, the provisions".

Crimes (Community Welfare) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Section 340 (2)—

5 Omit “a special magistrate exercising the jurisdiction of a children’s court”, insert instead “a member of the Children’s Court”.

(3) Section 353A (3)—

After “including”, insert “, where the person is of or above the age of 14 years,”.

(4) Sections 353AA, 353AB—

10 After section 353A, insert:—

Photographing, finger-printing, etc., children under 14 years of age.

353AA. (1) This section applies to a child under the age of 14 years who is in lawful custody for any offence punishable on indictment or summary conviction.

15 (2) A person shall not take a photograph or the finger-prints or palm-prints of a child to whom this section applies except in accordance with this section.

(3) A member of the police force of or above the rank of sergeant may, in respect of a child to whom this section applies,
20 apply—

(a) to the Children’s Court; or

(b) where it is not possible to apply to the Children’s Court within 72 hours after the taking of the child into custody, to a Justice,

25 for an order authorising, for the purpose only of identifying the child, the taking of the child’s photograph, finger-prints and palm-prints.

Crimes (Community Welfare) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (4) The Children's Court or a Justice, as the case may be, may hear an application under subsection (3) and may make the order sought in the application.

(5) A child to whom this section applies shall not be held in custody for the purpose only of being made an application under subsection (3).

Destruction of certain photographs, finger-prints, etc.

10 353AB. (1) Where a court finds an offence alleged against a child who has had his photograph, finger-prints and palm-prints taken
in accordance with section 353A (3) or 353AA not proved, the
15 court shall cause to be served on the child and, where practicable, the
parents or guardian of the child and any other person who has the
care of the child, a notice stating that if he or they so desires or desire,
the court will order that the photograph, finger-prints and palm-
prints and all other records (other than the records of the court)
relating to the alleged offence shall be destroyed by a person specified
in the order at a time and place so specified, and the court may make
20 the order accordingly.

(2) The child, the parents or guardian of the child and any other person on whom a notice has been served under subsection (1) may attend at the time and place specified in the notice.

(5) Section 437 (1A)—

25 After section 437 (1), insert:—

(1A) The power conferred on a Court or Judge by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.

Crimes (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(6) Section 556A (1B)—

After section 556A (1A), insert:—

- 5** (1B) The power conferred on a court by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.

(7) Section 558 (1A)—

After section 558 (1), insert:—

- 10** (1A) The power conferred on a Court by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.

MEMORANDUM FOR THE CHIEF OF BUREAU

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) ...
- (9) ...
- (10) ...
- (11) ...
- (12) ...
- (13) ...
- (14) ...
- (15) ...
- (16) ...
- (17) ...
- (18) ...
- (19) ...
- (20) ...
- (21) ...
- (22) ...
- (23) ...
- (24) ...
- (25) ...
- (26) ...
- (27) ...
- (28) ...
- (29) ...
- (30) ...
- (31) ...
- (32) ...
- (33) ...
- (34) ...
- (35) ...
- (36) ...
- (37) ...
- (38) ...
- (39) ...
- (40) ...
- (41) ...
- (42) ...
- (43) ...
- (44) ...
- (45) ...
- (46) ...
- (47) ...
- (48) ...
- (49) ...
- (50) ...

**CRIMES (COMMUNITY WELFARE) AMENDMENT ACT,
1982, No. 81**

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 81, 1982.

An Act to amend the Crimes Act, 1900, with respect to the obtaining of identifying evidence with respect to children under the age of 14 years and to make other amendments to that Act consequent upon the enactment of the Community Welfare Act, 1982. [Assented to, 25th May, 1982.]

Crimes (Community Welfare) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Crimes (Community Welfare) Amendment Act, 1982".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Community Welfare Act, 1982.

Amendment of Act No. 40, 1900.

3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

(1) Section 19—

Omit "The provisions", insert instead "Except in the case of murder committed by a child, within the meaning of the Community Welfare Act, 1982, the provisions".

Crimes (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Section 340 (2)—

Omit “a special magistrate exercising the jurisdiction of a children’s court”, insert instead “a member of the Children’s Court”.

(3) Section 353A (3)—

After “including”, insert “, where the person is of or above the age of 14 years,”.

(4) Sections 353AA, 353AB—

After section 353A, insert:—

Photographing, finger-printing, etc., children under 14 years of age.

353AA. (1) This section applies to a child under the age of 14 years who is in lawful custody for any offence punishable on indictment or summary conviction.

(2) A person shall not take a photograph or the finger-prints or palm-prints of a child to whom this section applies except in accordance with this section.

(3) A member of the police force of or above the rank of sergeant may, in respect of a child to whom this section applies, apply—

(a) to the Children’s Court; or

(b) where it is not possible to apply to the Children’s Court within 72 hours after the taking of the child into custody, to a Justice,

for an order authorising, for the purpose only of identifying the child, the taking of the child’s photograph, finger-prints and palm-prints.

Crimes (Community Welfare) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(4) The Children's Court or a Justice, as the case may be, may hear an application under subsection (3) and may make the order sought in the application.

(5) A child to whom this section applies shall not be held in custody for the purpose only of being made an application under subsection (3).

Destruction of certain photographs, finger-prints, etc.

353AB. (1) Where a court finds an offence alleged against a child who has had his photograph, finger-prints and palm-prints taken in accordance with section 353A (3) or 353AA not proved, the court shall cause to be served on the child and, where practicable, the parents or guardian of the child and any other person who has the care of the child, a notice stating that if he or they so desires or desire, the court will order that the photograph, finger-prints and palm-prints and all other records (other than the records of the court) relating to the alleged offence shall be destroyed by a person specified in the order at a time and place so specified, and the court may make the order accordingly.

(2) The child, the parents or guardian of the child and any other person on whom a notice has been served under subsection (1) may attend at the time and place specified in the notice.

(5) Section 437 (1A)—

After section 437 (1), insert:—

(1A) The power conferred on a Court or Judge by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.

Crimes (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(6) Section 556A (1B)—

After section 556A (1A), insert:—

(1B) The power conferred on a court by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.

(7) Section 558 (1A)—

After section 558 (1), insert:—

(1A) The power conferred on a Court by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 25th May, 1982.*

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982





