

FIRST PRINT

CHILDREN (CRIMINAL PROCEEDINGS) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Community Welfare Bill 1987.

The object of this Bill is to re-enact, with modifications, the provisions of Part VIII, and Divisions 4-7 of Part IX, of the Community Welfare Act 1982, being the provisions of that Act that relate to the conduct of criminal proceedings against children and other young persons.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 defines certain expressions for the purposes of the proposed Act, in particular, the expressions "serious indictable offence" and "traffic offence".

PART 2—CRIMINAL PROCEEDINGS GENERALLY

DIVISION 1—*Preliminary*

Clause 4 provides that the proposed Part applies to all courts exercising criminal jurisdiction and all criminal proceedings before those courts.

Clause 5 provides that it shall be conclusively presumed that no child under the age of 10 years can be guilty of an offence.

Children (Criminal Proceedings) 1987

Clause 6 specifies the principles to which a court shall have regard when exercising criminal jurisdiction with respect to children.

Clause 7 prevents a Local Court from hearing criminal proceedings which lie within the jurisdiction of the Children's Court.

DIVISION 2—Commencement of proceedings

Clause 8 provides that if criminal proceedings are to be taken against a child they shall be commenced by way of summons or citation unless—

- (a) the offence belongs to a specified class of serious offences;
- (b) there are reasonable grounds for believing that the child is likely to commit acts of violence; or
- (c) there are reasonable grounds for believing that the child is unlikely to appear before a court in compliance with a summons or citation.

Clause 9 provides that if criminal proceedings are to be commenced against a child otherwise than by way of summons or citation, the child shall be brought before the Children's Court not later than the next working day after the child is taken into custody.

DIVISION 3—Hearings

Clause 10 provides for the exclusion of persons from a court while the court is hearing criminal proceedings to which a child is a party.

Clause 11 prohibits the publication or broadcasting of the name, or any other matter that may lead to the identification, of a child who is in any way mentioned or involved in any criminal proceedings.

Clause 12 requires a court that is hearing criminal proceedings against a child to take such measures as are reasonable to ensure that the child understands the proceedings, and further requires the court to ensure that the child has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

Clause 13 provides that any statement, confession, admission or information that a child has made or given to a member of the police force shall not be admitted in evidence against the child unless it was made or given in the presence of a person responsible for the child or certain other adult persons (other than a member of the police force) or unless there are particular circumstances that warrant its admission in evidence.

Clause 14 prevents a court from proceeding to a conviction in relation to a child who is under the age of 16 years and enables a court to refuse to proceed to a conviction in relation to a child who is of or above the age of 16 years.

Clause 15 restricts the admissibility in evidence in criminal proceedings against a person of prior findings of guilt in respect of offences committed when the person was a child. The clause permits prior cautions to be taken into account on the imposition of any penalty.

Children (Criminal Proceedings) 1987

DIVISION 4—*Penalties*

Clause 16 provides that the proposed Division applies to persons who have pleaded guilty to indictable offences in, or have been found guilty or convicted of indictable offences by, a court other than the Children's Court, who were children when the offences were committed and who were under the age of 21 years when charged before the court.

Clause 17 requires a person to whom the proposed Division applies to be dealt with according to law in relation to a serious indictable offence.

Clause 18 enables a person to whom the proposed Division applies to be dealt with in relation to an indictable offence other than a serious indictable offence—

- (a) according to law; or
- (b) in accordance with Division 4 of proposed Part 3.

Clause 19 enables a court that sentences a person to whom the proposed Division applies to a term of imprisonment, in respect of an indictable offence, to direct that the whole or any part of the sentence be served in a detention centre.

Clause 20 enables a court to remit a person to whom the proposed Division applies to the Children's Court, in respect of an indictable offence other than a serious indictable offence, to be punished by the Children's Court.

Clause 21 confers certain rights of appeal on a person who is remitted to the Children's Court as referred to in clause 20.

DIVISION 5—*General*

Clause 22 prevents a court from adjourning committal proceedings against a child for more than 14 days at a time if, on the adjournment, it proposes to refuse bail to the child during the adjournment.

Clause 23 modifies section 82 of the Justices Act 1902 so as to ensure that children and other young persons who would otherwise be imprisoned for fine default shall instead be detained in detention centres for the period for which they would otherwise be imprisoned.

Clause 24 prohibits a court from requiring a child who is under the age of 16 years to pay compensation in connection with any criminal proceedings taken against the child.

Clause 25 requires a court to have regard to a background report prepared, in accordance with the regulations under the proposed Act, in respect of a child or other young person before sentencing the child or young person to imprisonment or detention.

PART 3—CRIMINAL PROCEEDINGS IN THE CHILDREN'S COURT

DIVISION 1—*Preliminary*

Clause 26 provides that the proposed Part applies to the Children's Court and all criminal proceedings before the Children's Court, and further provides that, in the event of any inconsistency between the proposed Part and proposed Part 2, the proposed Part 3 shall prevail to the extent of the inconsistency.

Children (Criminal Proceedings) 1987

Clause 27 provides that, subject to proposed Part 2 and to the rules of the Children's Court, the Justices Act 1902 applies to the Children's Court and all criminal proceedings before the Children's Court, and further provides that, in the event of any inconsistency between the proposed Part and the Justices Act 1902, the proposed Part 3 shall prevail to the extent of the inconsistency.

Clause 28 provides that 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 indictable offence; and
- (b) committal proceedings in respect of any indictable offence (including a serious indictable offence),

if the offence is alleged to have been committed by a person who was a child when the offence was committed and who was under the age of 21 years when charged before the Children's Court with the offence, but further provides that the Children's Court does not, except in certain instances, have jurisdiction to hear or determine proceedings in respect of a traffic offence.

Clause 29 establishes the jurisdiction of the Children's Court in respect of offences where there are several defendants who are not all children.

DIVISION 2—*Commencement of proceedings*

Clause 30 enables the Governor-in-Council to make rules, under section 23 of the proposed Children's Court Act 1987, with respect to the manner in which criminal proceedings may be commenced in the Children's Court, so enabling the establishment of a "citation" procedure that will facilitate the commencement of proceedings without the necessity for process being issued out of the Children's Court before a charge can be heard against a child.

DIVISION 3—*Hearings*

Clause 31 provides that proceedings before the Children's Court in respect of all offences (other than serious indictable offences) shall be dealt with summarily, but further provides that, in certain instances, the accused person or the Children's Court may decide that the proceedings be determined by a superior court, in which case the child is to be committed for trial to the superior court.

DIVISION 4—*Penalties*

Clause 32 provides that the proposed Division applies to all offences for which proceedings are being dealt with summarily or in respect of which a person has been remitted to the Children's Court as referred to in clause 20.

Clause 33 specifies the penalties that the Children's Court may impose on a child whom it has found guilty of an offence to which the proposed Division applies:

- (a) it may dismiss the charge (whether or not it also cautions the child) in respect of the offence;
- (b) it may release the child on a recognizance;
- (c) it may impose a fine (not exceeding \$500 or the maximum fine prescribed by law in respect of the offence) on the child;

Children (Criminal Proceedings) 1987

- (d) it may do both of the things referred to in paragraphs (b) and (c);
- (e) it may release the child on probation;
- (f) it may make an order under section 5 of the proposed Children (Community Service Orders) Act 1987 requiring the child to perform community service work;
- (g) it may commit the child to the control of the Minister administering the proposed Children (Detention Centres) Act 1987.

The clause provides that the Children's Court shall not deal with the child under any of the paragraphs above unless it is satisfied that it would be wholly inappropriate to deal with the child under a preceding paragraph, and further provides that it shall not have regard to the question of whether the child is a child in need of care within the meaning of the proposed Children (Care and Protection) Act 1987.

Clause 34 provides that a child may not be committed to the control of the Minister administering the proposed Children (Detention Centres) Act 1987 except in relation to an offence for which the law prescribes imprisonment as the penalty for the offence, and further provides that the period for which a child may be so committed shall not exceed the maximum period of imprisonment so prescribed.

Clause 35 requires the Children's Court to give a written statement to the prosecutor and to the person whom it has punished (and, if the person is a child, to a person responsible for the child) explaining why it has imposed the punishment that it has and why it considers that it would have been wholly inappropriate to impose a lesser punishment.

Clause 36 enables the Children's Court to make an order under section 554 of the Crimes Act 1900 for the payment of compensation by a child who is of or above the age of 16 years.

Clause 37 specifies that an order committing a person to the control of the Minister administering the proposed Children (Detention Centres) Act 1987 ceases to have effect—

- (a) in the case of a general order—at the end of 12 months; and
- (b) in the case of an order made for a specified period of time—at the end of that period.

Clause 38 requires the Children's Court to order the destruction of all photographs, finger-prints, palm-prints and records (other than court records) relating to an offence in respect of which it has ordered a charge to be dismissed and enables the Children's Court to make such an order in relation to an offence in respect of which it has made some other order.

DIVISION 5—General

Clause 39 defines certain expressions for the purposes of the proposed Division.

Clause 40 provides for the variation of recognizance or probation imposed on a person as referred to in clause 33.

Children (Criminal Proceedings) 1987

Clause 41 provides for the enforcement of the conditions of recognizance or probation imposed on a person as referred to in clause 33, and further provides for the revocation of recognizance or probation, in the event of a breach of those conditions, and the imposition on the person of an alternative punishment.

Clause 42 provides that an appeal may be made from a decision of the Children's Court, in accordance with Part V of the Justices Act 1902, and further provides that a person shall not be required to lodge a security for the prosecution of any such appeal.

PART 4—MISTAKE IN EXERCISE OF JURISDICTION

Clause 43 defines certain expressions for the purposes of the proposed Part.

Clause 44 enables a court to remit a case which it does not have jurisdiction to hear or determine to some other court that does have jurisdiction.

Clause 45 requires an application to be made for the review of any decision made by a court on a mistaken assumption concerning the age of the person the subject of the decision, and empowers the court to which such an application is made to set aside, quash or vary the decision or remit the case to another court.

Clause 46 provides for the remission of cases from one court to another, with particular regard to the transfer of depositions already taken by the court by which the case is being remitted.

Clause 47 ensures that no action for damages or compensation shall lie against any person arising out of a decision or any thing done pursuant to the decision, or the setting aside, quashing or variation of a decision, pursuant to any provision of the proposed Part.

Clause 48 ensures that nothing in the proposed Part shall limit the operation of the presumption referred to in clause 5.

PART 5—MISCELLANEOUS

Clause 49 provides that, subject to proposed Part 3, proceedings for an offence against the proposed Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 50 provides that the Bail Act 1978 prevails in the event of an inconsistency between that Act and the proposed Act.

Clause 51 enables the Governor-in-Council to make regulations for the purposes of the proposed Act.

CHILDREN (CRIMINAL PROCEEDINGS) BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2—CRIMINAL PROCEEDINGS GENERALLY

DIVISION 1—*Preliminary*

4. Application
5. Age of criminal responsibility
6. Principles relating to the exercise of criminal jurisdiction
7. Jurisdiction of the Children's Court not to be exercised by Local Courts

DIVISION 2—*Commencement of proceedings*

8. Commencement of proceedings by summons or citation
9. Expedition where child in custody

DIVISION 3—*Hearings*

10. Exclusion of general public from criminal proceedings
11. Publication of names, etc.
12. Courts to explain proceedings to children
13. Admissibility of certain statements, etc.
14. Recording of conviction
15. Evidence of prior offences, etc., not admissible in certain criminal proceedings

DIVISION 4—*Penalties*

16. Application
17. Serious indictable offences
18. Other indictable offences
19. Court may direct imprisonment to be served in a detention centre
20. Remission of persons to the Children's Court for punishment

Children (Criminal Proceedings) 1987

21. Rights of appeal where person remitted for sentence

DIVISION 5—General

22. Adjournments
23. Detention in default of payment of fines, etc.
24. Compensation
25. Background reports

PART 3—CRIMINAL PROCEEDINGS IN THE CHILDREN'S COURT

DIVISION 1—Preliminary

26. Application
27. Application of Justices Act 1902
28. Jurisdiction of the Children's Court
29. Jurisdiction in respect of 2 or more co-defendants who are not all children

DIVISION 2—Commencement of proceedings

30. Commencement of proceedings before the Children's Court

DIVISION 3—Hearings

31. Hearing of charges in the Children's Court

DIVISION 4—Penalties

32. Application
33. Penalties
34. Restrictions on the imposition of control orders, etc.
35. Reasons for decision to be given
36. Compensation under sec. 554 of the Crimes Act 1900
37. Term of control order
38. Destruction of photographs, finger-prints, etc.

DIVISION 5—General

39. Interpretation
40. Variation of recognizance or probation
41. Enforcement of conditions of recognizance or probation
42. Appeals

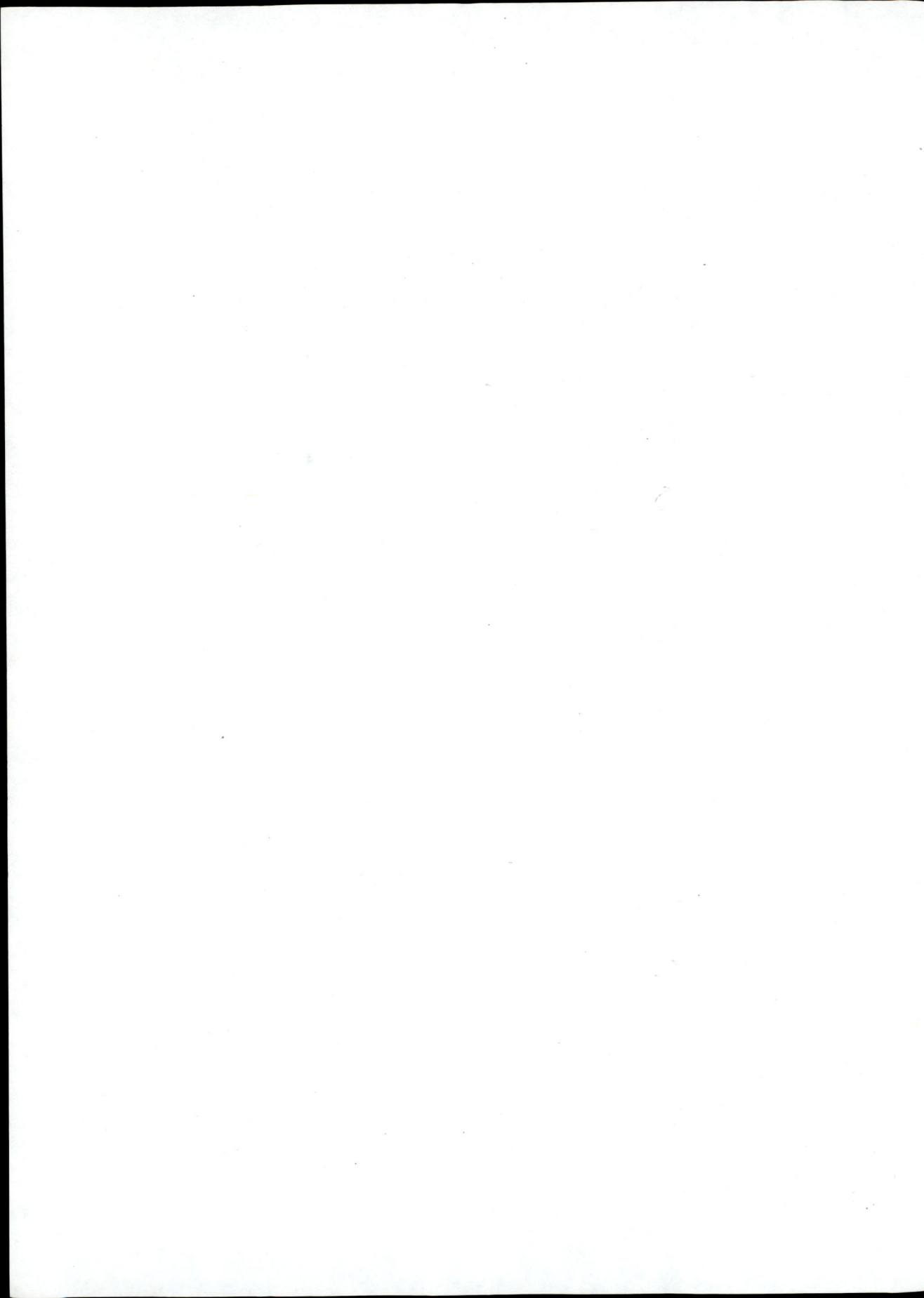
PART 4—MISTAKE IN EXERCISE OF JURISDICTION

43. Interpretation
44. Remission of cases on account of defendant's age
45. Review of decisions where mistake as to age
46. Procedures for remitting cases from one court to another
47. Exclusion of damages and compensation
48. Section 5 not affected

Children (Criminal Proceedings) 1987

PART 5—MISCELLANEOUS

- 49. Proceedings for offences
 - 50. Bail Act 1978 to prevail
 - 51. Regulations
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CHILDREN (CRIMINAL PROCEEDINGS) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

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

Children (Criminal Proceedings) 1987

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

PART 1
PRELIMINARY

Short title

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

10 **Commencement**

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

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

Interpretation

3. (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;

20 "authorised justice" means—

(a) a Magistrate; or

(b) a justice employed in the Local Courts Administration, Attorney General's Department;

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

25 "Children's Court" means the Children's Court of New South Wales constituted by the Children's Court Act 1987;

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

"imprisonment" includes penal servitude;

30 "parent" has the same meaning as it has in the Children (Care and Protection) Act 1987;

Children (Criminal Proceedings) 1987

“person responsible” has the same meaning as it has in the Children (Care and Protection) Act 1987;

“regulation” means a regulation made under this Act;

“serious indictable offence” means—

- 5 (a) homicide;
- (b) an offence punishable by penal servitude for life;
- (c) an offence arising under section 61B of the Crimes Act 1900; or
- (d) the offence of attempting to commit an offence arising under section 61B of the Crimes Act 1900;

10 “traffic offence” means an offence arising under a provision of—

- (a) the Motor Traffic Act 1909;
- (b) the Local Government Act 1919;
- (c) the Transport Act 1930;
- (d) the Motor Vehicles (Third Party Insurance) Act 1942; or
- 15 (e) the Recreation Vehicles Act 1983,

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

(2) In this Act, a reference to the commencement of criminal proceedings by way of citation is a reference to the commencement of those proceedings
20 in accordance with the rules of the Children’s Court relating to the commencement of criminal proceedings by way of citation, as referred to in section 30 (2).

(3) In this Act—

- 25 (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
-

PART 2

CRIMINAL PROCEEDINGS GENERALLY

DIVISION 1—*Preliminary***Application**

- 5 4. 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.

Age of criminal responsibility

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

Principles relating to the exercise of criminal jurisdiction

6. A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles:
- 15 (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,
 - 20 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;
 - 25 (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.

Jurisdiction of the Children's Court not to be exercised by Local Courts

7. A Local Court may not hear or determine criminal proceedings that
30 the Children's Court has jurisdiction to hear and determine.

*Children (Criminal Proceedings) 1987*DIVISION 2—*Commencement of proceedings***Commencement of proceedings by summons or citation**

8. If criminal proceedings are taken against a child in respect of an offence, the proceedings shall be commenced by way of summons or citation unless—

- 5
- (a) the offence consists of—
- (i) an offence arising under section 19, 22A, 24, 35, 52A, 52B, 61B, 61C, 97 or 98 of the Crimes Act 1900; or
- 10 (ii) an offence arising under Division 2 of Part II of the Drug Misuse and Trafficking Act 1985;
- (b) there are reasonable grounds for believing that the child is likely to commit acts of violence; or
- (c) there are reasonable grounds for believing that the child is unlikely to appear before a court in compliance with a summons or citation.

15 **Expedition where child in custody**

9. If criminal proceedings are to be commenced against a child otherwise than by way of summons or citation, and the child is not granted bail under the Bail Act 1978, the child shall be brought before the Children's Court as soon as practicable but, in any case, no later than the next day, or, if the next day is a Saturday, Sunday or public holiday, no later than the next day that is not a Saturday, Sunday or public holiday.

DIVISION 3—*Hearings***Exclusion of general public from criminal proceedings**

10. (1) While a court is hearing criminal proceedings to which a child is a party—

- 25
- (a) any person (other than a person referred to in paragraph (b)) who is not directly interested in the proceedings shall, unless the court otherwise directs, be excluded from the place where the proceedings are being heard; and
- 30 (b) any person who is engaged in preparing a report on the proceedings for dissemination through a public news medium shall, unless the court otherwise directs, be entitled to enter or remain in the place where the proceedings are being heard.

Children (Criminal Proceedings) 1987

(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) 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.

10 **Publication of names, etc.**

11. (1) The name of any child—

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

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

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

20 (3) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

(4) Subsection (1) does not prohibit—

25 (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1); or

(b) the publication or broadcasting of the name of a child—

30 (i) in the case of a child who is under the age of 14 years at the time of publication or broadcasting—with the consent of the Attorney General; or

35 (ii) in the case of a child who is of or above the age of 14 years at the time of publication or broadcasting—with the consent of the child.

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

Courts to explain proceedings to children

5 12. (1) In any criminal proceedings against a child, a court shall take such measures as are reasonably practicable to ensure that the child understands the proceedings and, in particular, that the child understands—

- (a) the facts that must be established before the child can be found guilty of the offence with which the child is charged;
- 10 (b) the nature of any allegations made against the child; and
- (c) the legal implications of any such allegation.

(2) Without limiting the generality of subsection (1), a court shall, if requested by the child or by some other person on behalf of the child, explain to the child—

- 15 (a) any aspect of the court's procedure; and
- (b) any decision or ruling made by the court,

in or in relation to the proceedings.

(3) Without limiting the generality of subsection (1), a court shall ensure that the child has the fullest opportunity practicable to be heard, and to
20 participate, in the proceedings.

Admissibility of certain statements, etc.

13. (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—

- 25 (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;
 - 30 (iii) in the case of a child who is of or above the age of 16 years—
an adult (other a member of the police force) who was present with the consent of the child; or
 - (iv) a barrister or solicitor of the child's own choosing; or

Children (Criminal Proceedings) 1987

(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.

Recording of conviction

14. (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 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 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 a conviction in respect of a child who is charged with an indictable offence that is not disposed of summarily.

*Children (Criminal Proceedings) 1987***Evidence of prior offences, etc., not admissible in certain criminal proceedings**

15 **15. (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
- 10 (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) does not apply to any criminal proceedings before the Children's Court.

15 **(3)** Nothing in this Act or any other law prevents a court from taking into account, on the imposition of a penalty in criminal proceedings taken against a person for an offence committed when the person was a child, the fact that the person has been formally cautioned by a member of the police force in respect of an earlier offence.

20

DIVISION 4—Penalties**Application**

16. This Division applies to a person—

- 25 (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.

Serious indictable offences

30 **17.** A person to whom this Division applies shall, in relation to a serious indictable offence, be dealt with according to law.

Other indictable offences

18. (1) A person to whom this Division applies shall, in relation to an indictable offence other than a serious indictable offence, be dealt with—

- (a) according to law; or
- 5 (b) in accordance with Division 4 of Part 3.

(2) For the purpose of dealing with a person in accordance with Division 4 of Part 3, a court shall have and may exercise the functions of the Children's Court under that Division in the same way as if—

- (a) the court were the Children's Court; and
- 10 (b) the offence were an offence to which that Division applies.

Court may direct imprisonment to be served in a detention centre

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

Remission of persons to the Children's Court for punishment

20. (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 indictable offence, so as to enable the Children's Court to impose a penalty
20 on the person with respect to the offence, but may do so only in respect of a person who is under the age of 21 years.

(2) A court that remits a person under this section—

- (a) may, subject to the Bail Act 1978, commit the person to custody until the person can appear or be brought before the Children's
25 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
 - 30 (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.

*Children (Criminal Proceedings) 1987***Rights of appeal where person remitted for sentence**

21. (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 section 122 of the Justices Act 1902, in the same way as if the person had been tried and found guilty of the offence by the Children's Court.

DIVISION 5—General**Adjournments**

22. A court shall not adjourn criminal proceedings against a child for a period exceeding 14 days on any one occasion if, on the adjournment, it proposes to refuse to grant bail under the Bail Act 1978 to the child during the period of the adjournment.

Detention in default of payment of fines, etc.

23. (1) In the application of section 82 (2) of the Justices Act 1902 to a person who has been adjudged—

(a) by the Children's Court;

(b) by any other court exercising the functions of the Children's Court under Division 4 of Part 3; or

(c) in relation to a traffic offence committed by a child within the meaning of section 84A of the Justices Act 1902, by a Local Court,

to pay any fine or penalty, or any sum of money or costs, a requirement under that subsection that the child be imprisoned and kept for a period calculated in accordance with the provisions of that subsection shall be construed as a requirement that the child be committed to the control of the Minister administering the Children (Detention Centres) Act 1987 for a period so calculated.

(2) An order of a court whereby a child has been adjudged to pay any fine or penalty, or any sum of money or costs, shall, in the event of default, be deemed to be an order under section 33 (1) (g).

Compensation

24. A court shall not, in or in connection with any criminal proceedings against a child—

- (a) order the child to pay compensation; or
 - 5 (b) require the child to pay compensation under the conditions of any other order made by the court in respect of the child,
- if the child is under the age of 16 years.

Background reports

25. (1) This section applies to a person—

- 10 (a) who has pleaded guilty to an offence in, or has been found guilty or convicted of an offence 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.

15 (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—

- 20 (a) the prosecutor has tendered in evidence a background report, prepared in accordance with the regulations, with respect to the circumstances surrounding the commission of the offence;
 - (b) the prosecutor has caused copies of the report to be given to the child and any other person appearing in the proceedings; and
 - 25 (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***Application**

5 26. (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
10 Part shall prevail to the extent of the inconsistency.

Application of Justices Act 1902

27. (1) Subject to Part 2 and to the rules of the Children's Court, the
Justices Act 1902 applies to—

(a) the Children's Court; and

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

in the same way as it applies to a justice or justices and to criminal
proceedings before a justice or justices.

(2) In the event of an inconsistency between this Part and the Justices
Act 1902, this Part shall prevail to the extent of the inconsistency.

20 Jurisdiction of the Children's Court

28. (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 indictable offence; and

25 (b) committal proceedings in respect of any indictable offence (including
a serious 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.

Children (Criminal Proceedings) 1987

(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—

- 5 (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 Motor Traffic Act 1909 or the Transport Act 1930 authorising the person to drive the
10 motor vehicle to which the offence relates.

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

29. (1) If a charge in respect of an offence (whether indictable or otherwise) is made jointly against—

- 15 (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—

- 20 (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) with the consent of the person in respect of whom it has jurisdiction—may continue the hearing of the charge against that person without any such adjournment.

25 (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
- 30 (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.

Children (Criminal Proceedings) 1987

(3) The Children's Court shall not hear and determine committal proceedings as referred to in subsection (2) unless—

- (a) the elder of the persons referred to in that subsection is less than 3 years older than the younger of those persons; and
- 5 (b) the Children's Court is of the opinion that the proceedings should be so heard and determined.

(4) For the purpose of exercising its functions under subsection (2), the Children's Court—

- (a) shall have, and may exercise, the jurisdiction of a Local Court; and
- 10 (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*

Commencement of proceedings before the Children's Court

15 30. (1) The Governor may, in exercising the power conferred by section 23 of the Children's Court Act 1987, make rules, not inconsistent with this Act, for or with respect to the manner in which criminal proceedings may be commenced in the Children's Court.

20 (2) Without limiting the generality of subsection (1), the Governor may, in exercising the power referred to in that subsection, make rules, not inconsistent with this Act, for the commencement of criminal proceedings by way of citation.

(3) A rule referred to in this section—

- 25 (a) may or may not require the issue of process out of the Children's Court; and
- (b) may modify or exclude the provisions of the Justices Act 1902 relating to the commencement of criminal proceedings.

DIVISION 3—*Hearings*

Hearing of charges in the Children's Court

30 31. (1) If a person is charged before the Children's Court with an offence (whether indictable or otherwise) other than a serious indictable offence, the proceedings for the offence shall be dealt with summarily.

*Children (Criminal Proceedings) 1987***(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

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

the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 41 (subsections (1) and (1A) 10 excepted) of the Justices Act 1902 in the same way as if an information had been laid before the Children's Court in accordance with section 21 of that Act.

(3) Notwithstanding subsection (1)—

15 (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) the Children's Court is of the opinion, after all the evidence for the prosecution has been taken—

20 (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,

25 the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 41 (subsections (1) and (1A) excepted) of the Justices Act 1902 in the same way as if an information had been laid before the Children's Court in accordance with section 21 of that Act and as if the Children's Court had formed the opinion referred to in 30 section 41 (2) (b) of that Act.

(4) If, in the circumstances referred to in subsection (3), the Children's Court commits a person for trial, the Children's Court shall forthwith furnish to the person and to the Attorney General a statement of the reasons for its decision to commit the person for trial instead of dealing with the 35 matter summarily.

*Children (Criminal Proceedings) 1987*DIVISION 4—*Penalties***Application**

32. 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.

Penalties

33. (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:

- 10 (a) it may make an order dismissing the charge, or it may make an order dismissing the charge and may administer a caution to the person;
- (b) it may make an order releasing the person on condition that the person enters into a recognizance, with or without sureties, to comply with such conditions as it may determine for such period of time, not exceeding 12 months, as it thinks fit;
- 15 (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) \$500,
- whichever is the lesser;
- 20 (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 12 months, as it thinks fit;
- 25 (f) it may, subject to the provisions of the Children (Community Service Orders) Act 1987, make an order under section 5 of that Act requiring the person to perform community service work;
- (g) it may make an order committing the person—
- (i) generally; or
- (ii) for such period of time (not exceeding 2 years) as it thinks fit,
- 30 to the control of the Minister administering the Children (Detention Centres) Act 1987.

Children (Criminal Proceedings) 1987

(2) The Children's Court shall not deal with a person under a paragraph of subsection (1) unless it is satisfied that it would be wholly inappropriate to deal with the person under a preceding paragraph of that subsection.

5 (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 within the meaning of the Children (Care and Protection) Act 1987.

(4) Notwithstanding any other Act or law to the contrary, the Children's Court shall not sentence a person to imprisonment.

10 **Restrictions on the imposition of control orders, etc.**

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

15 (2) An order shall not be made under section 33 (1) (g) whereby a person is committed generally to the control of the Minister administering the Children (Detention Centres) Act 1987 unless the maximum penalty provided by law in respect of the offence is imprisonment for a period of 12 months or more.

20 (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.

Reasons for decision to be given

25 35. When the Children's Court deals with a person under a paragraph of section 33 (1), it shall prepare a written statement explaining—

- (a) the reason for which it has dealt with the person under that paragraph; and
- 30 (b) the reason for which it considered that it would have been wholly inappropriate to deal with the person under any of the preceding paragraphs of section 33 (1),

and shall cause a copy of the statement to be given to the prosecutor and to the person and, if the person is a child, to a person responsible for the child.

*Children (Criminal Proceedings) 1987***Compensation under sec. 554 of the Crimes Act 1900**

36. If the Children's Court makes an order under a paragraph of section 33 (1) in respect of a person who is of or above the age of 16 years, it may, under section 554 (subsections (1) and (2) excepted) of the Crimes Act 1900, make a further order for the payment of compensation by the person.

Term of control order

37. Subject to section 15 of the Children (Care and Protection) Act 1987 and section 32 of the Children (Detention Centres) Act 1987, an order under section 33 (1) (g) ceases to have effect—

- 10 (a) in the case of an order made generally—at the end of the period of 12 months after it was made; or
- (b) in the case of an order made for a specified period of time—at the end of that period.

Destruction of photographs, finger-prints, etc.

15 38. (1) When, in relation to an offence to which this Division applies, the Children's Court—

- (a) finds a person not guilty of the offence; or
- (b) exercises, in respect of a person, the power conferred on it by section 33 (1) (a),

20 the Children's Court shall order that any photographs, finger-prints and palm-prints, and any other records (other than records of the Children's Court), relating to the offence be destroyed.

(2) When, in relation to an offence to which this Division applies, the Children's Court—

- 25 (a) exercises, in respect of a person, the power conferred on it by section 33 (1) (b), (c), (d), (e), (f) or (g); and
- (b) is of the opinion that the circumstances of the case justify its doing so,

30 the Children's Court may (whether on the application of the person or otherwise) order that any photographs, finger-prints and palm-prints, and any other records (other than records of the Children's Court), relating to the offence be destroyed.

Children (Criminal Proceedings) 1987

(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***5 Interpretation**

39. 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
- 10 (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;

“Department” means the Department of Youth and Community Services;

15 “Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department.

Variation of recognizance or probation

20 40. (1) In relation to an order of recognizance or 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;
- 25 (c) it may vary any condition of the order in any respect, including (where the person has entered into the recognizance, 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.

30 (2) The Children's Court may not extend the period of an order of recognizance or probation.

*Children (Criminal Proceedings) 1987***Enforcement of conditions of recognizance or probation**

41. (1) If an authorised officer or a member of the police force informs an authorised justice, on oath, that the officer or member of the police force, with reasonable cause, believes that a person—

- 5 (a) has entered into a recognizance, or been released on probation, under section 33 (1); and
- (b) has failed to comply with a condition of the person's recognizance or probation,

the authorised justice—

- 10 (c) may issue a summons for the appearance of the person before—
- (i) in the case of a person who is under the age of 21 years—the Children's Court; or
- (ii) in the case of a person who is of or above the age of 21 years—a Local Court; or
- 15 (d) if the authorised justice is satisfied that the person is unlikely to appear in answer to a summons—may issue a warrant directing the arrest of the person,

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

- 20 (2) An authorised officer, or a member of the police force, may arrest a person in respect of whom a warrant has been issued under subsection (1) (d), whether or not the warrant is in the possession of the officer or member of the police force at the time of arrest.

(3) A person who is arrested under this section shall be brought before—

- 25 (a) in the case of a person who is under the age of 21 years—the Children's Court; or
- (b) in the case of a person who is of or above the age of 21 years—a Local Court,

30 to be dealt with in accordance with subsection (4) or (5), as the case may require.

Children (Criminal Proceedings) 1987

(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 recognizance or probation, 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 recognizance or was released on probation, as the case may be.

(5) A person who is brought before a Local Court shall, if it is proved that the person has failed to comply with a condition of the person's recognizance or probation, 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 recognizance or was released on probation, 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.

15 Appeals

42. (1) In addition to any other person by whom an appeal may be taken under Part V of the Justices Act 1902 in respect of a decision made by the Children's Court with respect to a person, an appeal may be taken—

(a) by the person; or

20 (b) in the case of a child, by the child or—

(i) by a person responsible for the child;

(ii) by the child's solicitor; or

25 (iii) if the child is in the care or custody of the Minister administering the Children (Care and Protection) Act 1987 or the Director-General—by that Minister or the Director-General, on behalf of the child.

(2) Notwithstanding sections 102 and 123 of the Justices Act 1902, the Children's Court shall not, as a condition of any recognizance referred to in either of those sections, require a person to lodge a sum of money as security for the prosecution of an appeal from a decision of the Children's Court under this Act.

(3) In this section, a reference to a decision includes a reference to a finding, order, determination and judgment, but does not include a reference to an order made under section 33 (1) (a).

PART 4

MISTAKE IN EXERCISE OF JURISDICTION

Interpretation

43. 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—
 - 10 (i) an order dismissing a charge; or
 - (ii) an order discharging an offender under section 556A (1) (b) of the Crimes Act 1900.

Remission of cases on account of defendant's age

44. If a court before which a person is charged with an offence is 15 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.

Review of decisions where mistake as to age

45. (1) If—
- 20 (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
 - 25 (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.

- 30 (2) A court to which an application for review is made—
 - (a) may set aside or quash the decision;

Children (Criminal Proceedings) 1987

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

5 (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.

10 (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.

Procedures for remitting cases from one court to another

46. (1) A court that remits a case to another court—

15 (a) may, subject to the Bail Act 1978, commit the defendant to custody until the defendant can appear or be brought before the other court; and

20 (b) shall cause to be sent to the clerk or other proper officer of the other court all documents and depositions held by the firstmentioned court in relation to the case.

(2) The deposition of any witness called and examined before a court that remits a case to another court may be accepted as evidence for either party to the case by the other court if the other party consents to its being so accepted or if it is proved on oath—

25 (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;

(b) that—

30 (i) in the case of a deposition taken down in writing—the deposition was taken in the presence of the other party; or

35 (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

Children (Criminal Proceedings) 1987

- (c) that the other party, or the other party's barrister or solicitor, has had full opportunity to examine the witness.

Exclusion of damages and compensation

47. 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.

Section 5 not affected

48. Nothing in this Part limits the operation of section 5.

10

PART 5**MISCELLANEOUS****Proceedings for offences**

49. Subject to Part 3, proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Bail Act 1978 to prevail

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

Regulations

- 20 51. (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—
- 25 (a) the kind of conditions that may or may not be imposed in relation to orders made under section 33 (1) (b) and (e); and
- (b) the keeping of records for the purposes of this Act.

Children (Criminal Proceedings) 1987

(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
 - 5 (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.

CHILDREN (CRIMINAL PROCEEDINGS) BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2—CRIMINAL PROCEEDINGS GENERALLY

DIVISION 1—*Preliminary*

4. Application
5. Age of criminal responsibility
6. Principles relating to the exercise of criminal jurisdiction
7. Jurisdiction of the Children's Court not to be exercised by Local Courts

DIVISION 2—*Commencement of proceedings*

8. Commencement of proceedings by summons or citation
9. Expedition where child in custody

DIVISION 3—*Hearings*

10. Exclusion of general public from criminal proceedings
11. Publication of names, etc.
12. Courts to explain proceedings to children
13. Admissibility of certain statements, etc.
14. Recording of conviction
15. Evidence of prior offences, etc., not admissible in certain criminal proceedings

DIVISION 4—*Penalties*

16. Application
17. Serious indictable offences
18. Other indictable offences
19. Court may direct imprisonment to be served in a detention centre
20. Remission of persons to the Children's Court for punishment

Children (Criminal Proceedings) 1987

21. Rights of appeal where person remitted for sentence

DIVISION 5—*General*

22. Adjournments
 23. Detention in default of payment of fines, etc.
 24. Compensation
 25. Background reports

PART 3—CRIMINAL PROCEEDINGS IN THE CHILDREN'S COURT

DIVISION 1—*Preliminary*

26. Application
 27. Application of Justices Act 1902
 28. Jurisdiction of the Children's Court
 29. Jurisdiction in respect of 2 or more co-defendants who are not all children

DIVISION 2—*Commencement of proceedings*

30. Commencement of proceedings before the Children's Court

DIVISION 3—*Hearings*

31. Hearing of charges in the Children's Court

DIVISION 4—*Penalties*

32. Application
 33. Penalties
 34. Restrictions on the imposition of control orders, etc.
 35. Reasons for decision to be given
 36. Compensation under sec. 554 of the Crimes Act 1900
 37. Term of control order
 38. Destruction of photographs, finger-prints, etc.

DIVISION 5—*General*

39. Interpretation
 40. Variation of recognizance or probation
 41. Enforcement of conditions of recognizance or probation
 42. Appeals

PART 4—MISTAKE IN EXERCISE OF JURISDICTION

43. Interpretation
 44. Remission of cases on account of defendant's age
 45. Review of decisions where mistake as to age
 46. Procedures for remitting cases from one court to another
 47. Exclusion of damages and compensation
 48. Section 5 not affected

Children (Criminal Proceedings) 1987

PART 5—MISCELLANEOUS

- 49. Proceedings for offences
 - 50. Bail Act 1978 to prevail
 - 51. Regulations
-

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, , 1987*

NEW SOUTH WALES



Act No. , 1987

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

Children (Criminal Proceedings) 1987

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

PART 1

PRELIMINARY

Short title

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

10 **Commencement**

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

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

Interpretation

3. (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;

20 "authorised justice" means—

(a) a Magistrate; or

(b) a justice employed in the Local Courts Administration, Attorney General's Department;

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

25 "Children's Court" means the Children's Court of New South Wales constituted by the Children's Court Act 1987;

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

"imprisonment" includes penal servitude;

30 "parent" has the same meaning as it has in the Children (Care and Protection) Act 1987;

Children (Criminal Proceedings) 1987

“person responsible” has the same meaning as it has in the Children (Care and Protection) Act 1987;

“regulation” means a regulation made under this Act;

“serious indictable offence” means—

- 5 (a) homicide;
- (b) an offence punishable by penal servitude for life;
- (c) an offence arising under section 61B of the Crimes Act 1900; or
- (d) the offence of attempting to commit an offence arising under section 61B of the Crimes Act 1900;
- 10 “traffic offence” means an offence arising under a provision of—
- (a) the Motor Traffic Act 1909;
- (b) the Local Government Act 1919;
- (c) the Transport Act 1930;
- (d) the Motor Vehicles (Third Party Insurance) Act 1942; or
- 15 (e) the Recreation Vehicles Act 1983,

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

(2) In this Act, a reference to the commencement of criminal proceedings by way of citation is a reference to the commencement of those proceedings
20 in accordance with the rules of the Children’s Court relating to the commencement of criminal proceedings by way of citation, as referred to in section 30 (2).

(3) In this Act—

- 25 (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
-

PART 2

CRIMINAL PROCEEDINGS GENERALLY

DIVISION 1—*Preliminary***Application**

- 5 **4.** 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.

Age of criminal responsibility

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

Principles relating to the exercise of criminal jurisdiction

- 6.** A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles:
- 15 (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,
 - 20 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;
 - 25 (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.

Jurisdiction of the Children's Court not to be exercised by Local Courts

- 30 **7.** A Local Court may not hear or determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.

*Children (Criminal Proceedings) 1987***DIVISION 2—Commencement of proceedings****Commencement of proceedings by summons or citation**

8. If criminal proceedings are taken against a child in respect of an offence, the proceedings shall be commenced by way of summons or citation
5 unless—

(a) the offence consists of—

(i) an offence arising under section 19, 22A, 24, 35, 52A, 52B, 61B, 61C, 97 or 98 of the Crimes Act 1900; or

10 (ii) an offence arising under Division 2 of Part II of the Drug Misuse and Trafficking Act 1985;

(b) there are reasonable grounds for believing that the child is likely to commit acts of violence; or

(c) there are reasonable grounds for believing that the child is unlikely to appear before a court in compliance with a summons or citation.

15 Expedition where child in custody

9. If criminal proceedings are to be commenced against a child otherwise than by way of summons or citation, and the child is not released on bail under the Bail Act 1978, the child shall be brought before the Children's Court as soon as practicable but, in any case, no later than the next day,
20 or, if the next day is a Saturday, Sunday or public holiday, no later than the next day that is not a Saturday, Sunday or public holiday.

DIVISION 3—Hearings**Exclusion of general public from criminal proceedings**

10. (1) While a court is hearing criminal proceedings to which a child
25 is a party—

(a) any person (other than a person referred to in paragraph (b)) who is not directly interested in the proceedings shall, unless the court otherwise directs, be excluded from the place where the proceedings are being heard; and

30 (b) any person who is engaged in preparing a report on the proceedings for dissemination through a public news medium shall, unless the court otherwise directs, be entitled to enter or remain in the place where the proceedings are being heard.

Children (Criminal Proceedings) 1987

(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) 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.

10 **Publication of names, etc.**

11. (1) The name of any child—

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

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

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

20 (3) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

(4) Subsection (1) does not prohibit—

25 (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1); or

(b) the publication or broadcasting of the name of a child—

30 (i) in the case of a child who is under the age of 14 years at the time of publication or broadcasting—with the consent of the Attorney General; or

35 (ii) in the case of a child who is of or above the age of 14 years at the time of publication or broadcasting—with the consent of the child.

Children (Criminal Proceedings) 1987

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

Courts to explain proceedings to children

5 **12. (1)** In any criminal proceedings against a child, a court shall take such measures as are reasonably practicable to ensure that the child understands the proceedings and, in particular, that the child understands—

- (a) the facts that must be established before the child can be found guilty of the offence with which the child is charged;
- 10 (b) the nature of any allegations made against the child; and
- (c) the legal implications of any such allegation.

(2) Without limiting the generality of subsection (1), a court shall, if requested by the child or by some other person on behalf of the child, explain to the child—

- 15 (a) any aspect of the court's procedure; and
- (b) any decision or ruling made by the court,

in or in relation to the proceedings.

(3) Without limiting the generality of subsection (1), a court shall ensure that the child has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

Admissibility of certain statements, etc.

13. (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—

- 25 (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;
 - 30 (iii) in the case of a child who is of or above the age of 16 years— an adult (other than a member of the police force) who was present with the consent of the child; or
 - (iv) a barrister or solicitor of the child's own choosing; or

Children (Criminal Proceedings) 1987

(b) the person acting judicially in those proceedings—

- 5 (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—

- 10 (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
- 15 (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.

Recording of conviction

20 14. (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 a conviction in relation to a child who is under the age of 16 years; and
- 25 (b) may, in respect of an offence which is disposed of summarily, refuse to proceed to 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 a conviction in respect of a child who is charged with an indictable offence that is not disposed of summarily.

*Children (Criminal Proceedings) 1987***Evidence of prior offences, etc., not admissible in certain criminal proceedings**

15 **15. (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

10 (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) does not apply to any criminal proceedings before the Children's Court.

15 **(3)** Nothing in this Act or any other law prevents a court from taking into account, on the imposition of a penalty in criminal proceedings taken against a person for an offence committed when the person was a child, the fact that the person has been formally cautioned by a member of the police force in respect of an earlier offence.

20

DIVISION 4—Penalties**Application**

16. This Division applies to a person—

25 (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.

Serious indictable offences

30 **17.** A person to whom this Division applies shall, in relation to a serious indictable offence, be dealt with according to law.

Other indictable offences

18. (1) A person to whom this Division applies shall, in relation to an indictable offence other than a serious indictable offence, be dealt with—

(a) according to law; or

5 (b) in accordance with Division 4 of Part 3.

(2) For the purpose of dealing with a person in accordance with Division 4 of Part 3, a court shall have and may exercise the functions of the Children's Court under that Division in the same way as if—

(a) the court were the Children's Court; and

10 (b) the offence were an offence to which that Division applies.

Court may direct imprisonment to be served in a detention centre

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

Remission of persons to the Children's Court for punishment

20. (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 indictable offence, so as to enable the Children's Court to impose a penalty
20 on the person with respect to the offence, but may do so only in respect of a person who is under the age of 21 years.

(2) A court that remits a person under this section—

(a) may, subject to the Bail Act 1978, commit the person to custody until the person can appear or be brought before the Children's
25 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

30 (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.

*Children (Criminal Proceedings) 1987***Rights of appeal where person remitted for sentence**

21. (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 section 122 of the Justices Act 1902, in the same way as if the person had been tried and found guilty of the offence by the Children's Court.

DIVISION 5—General**Adjournments**

22. A court shall not adjourn criminal proceedings against a child for a period exceeding 14 days on any one occasion if, on the adjournment, it proposes to refuse to grant bail under the Bail Act 1978 to the child during the period of the adjournment.

Detention in default of payment of fines, etc.

23. (1) In the application of section 82 (2) of the Justices Act 1902 to a person who has been adjudged—

(a) by the Children's Court;

(b) by any other court exercising the functions of the Children's Court under Division 4 of Part 3; or

(c) in relation to a traffic offence committed by a child within the meaning of section 84A of the Justices Act 1902, by a Local Court,

to pay any fine or penalty, or any sum of money or costs, a requirement under that subsection that the child be imprisoned and kept for a period calculated in accordance with the provisions of that subsection shall be construed as a requirement that the child be committed to the control of the Minister administering the Children (Detention Centres) Act 1987 for a period so calculated.

(2) An order of a court whereby a child has been adjudged to pay any fine or penalty, or any sum of money or costs, shall, in the event of default, be deemed to be an order under section 33 (1) (g).

Compensation

24. A court shall not, in or in connection with any criminal proceedings against a child—

- (a) order the child to pay compensation; or
- 5 (b) require the child to pay compensation under the conditions of any other order made by the court in respect of the child,

if the child is under the age of 16 years.

Background reports

25. (1) This section applies to a person—

- 10 (a) who has pleaded guilty to an offence in, or has been found guilty or convicted of an offence 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.

15 (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—

- 20 (a) the prosecutor has tendered in evidence a background report, prepared in accordance with the regulations, with respect to the circumstances surrounding the commission of the offence;
 - (b) the prosecutor has caused copies of the report to be given to the child and any other person appearing in the proceedings; and
 - 25 (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***Application**

5 26. (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
10 Part shall prevail to the extent of the inconsistency.

Application of Justices Act 1902

27. (1) Subject to Part 2 and to the rules of the Children's Court, the
Justices Act 1902 applies to—

(a) the Children's Court; and

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

in the same way as it applies to a justice or justices and to criminal
proceedings before a justice or justices.

(2) In the event of an inconsistency between this Part and the Justices
Act 1902, this Part shall prevail to the extent of the inconsistency.

20 Jurisdiction of the Children's Court

28. (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 indictable offence; and

25 (b) committal proceedings in respect of any indictable offence (including
a serious 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.

Children (Criminal Proceedings) 1987

(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—

- 5 (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 Motor Traffic Act 1909 or the Transport Act 1930 authorising the person to drive the motor vehicle to which the offence relates.
- 10

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

29. (1) If a charge in respect of an offence (whether indictable or otherwise) is made jointly against—

- 15 (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—

- 20 (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) with the consent of the person in respect of whom it has jurisdiction—may continue the hearing of the charge against that person without any such adjournment.

25 (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
- 30 (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.

Children (Criminal Proceedings) 1987

(3) The Children's Court shall not hear and determine committal proceedings as referred to in subsection (2) unless—

- (a) the elder of the persons referred to in that subsection is less than 3 years older than the younger of those persons; and
- 5 (b) the Children's Court is of the opinion that the proceedings should be so heard and determined.

(4) For the purpose of exercising its functions under subsection (2), the Children's Court—

- (a) shall have, and may exercise, the jurisdiction of a Local Court; and
- 10 (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*

Commencement of proceedings before the Children's Court

15 **30. (1)** The Governor may, in exercising the power conferred by section 23 of the Children's Court Act 1987, make rules, not inconsistent with this Act, for or with respect to the manner in which criminal proceedings may be commenced in the Children's Court.

20 (2) Without limiting the generality of subsection (1), the Governor may, in exercising the power referred to in that subsection, make rules, not inconsistent with this Act, for the commencement of criminal proceedings by way of citation.

(3) A rule referred to in this section—

- 25 (a) may or may not require the issue of process out of the Children's Court; and
- (b) may modify or exclude the provisions of the Justices Act 1902 relating to the commencement of criminal proceedings.

DIVISION 3—*Hearings*

Hearing of charges in the Children's Court

30 **31. (1)** If a person is charged before the Children's Court with an offence (whether indictable or otherwise) other than a serious indictable offence, the proceedings for the offence shall be dealt with summarily.

*Children (Criminal Proceedings) 1987***(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
- 5 (b) the person informs the Children's Court (at any time during, or at the close of, the case for the prosecution) that the person wishes to take his or her trial according to law,

the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 41 (subsections (1) and (1A) 10 excepted) of the Justices Act 1902 in the same way as if an information had been laid before the Children's Court in accordance with section 21 of that Act.

(3) Notwithstanding subsection (1)—

- 15 (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) the Children's Court is of the opinion, after all the evidence for the prosecution has been taken—
 - 20 (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,

25 the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 41 (subsections (1) and (1A) excepted) of the Justices Act 1902 in the same way as if an information had been laid before the Children's Court in accordance with section 21 of that Act and as if the Children's Court had formed the opinion referred to in 30 section 41 (2) (b) of that Act.

(4) If, in the circumstances referred to in subsection (3), the Children's Court commits a person for trial, the Children's Court shall forthwith furnish to the person and to the Attorney General a statement of the reasons for its decision to commit the person for trial instead of dealing with the 35 matter summarily.

DIVISION 4—*Penalties***Application**

32. 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.

Penalties

33. (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:

- 10 (a) it may make an order dismissing the charge, or it may make an order dismissing the charge and may administer a caution to the person;
- (b) it may make an order releasing the person on condition that the person enters into a recognizance, with or without sureties, to comply with such conditions as it may determine for such period of time, not exceeding 12 months, as it thinks fit;
- 15 (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) \$500,whichever is the lesser;
- 20 (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 12 months, as it thinks fit;
- 25 (f) it may, subject to the provisions of the Children (Community Service Orders) Act 1987, make an order under section 5 of that Act requiring the person to perform community service work;
- (g) it may make an order committing the person—
 - (i) generally; or
 - (ii) for such period of time (not exceeding 2 years) as it thinks fit,30 to the control of the Minister administering the Children (Detention Centres) Act 1987.

Children (Criminal Proceedings) 1987

(2) The Children's Court shall not deal with a person under a paragraph of subsection (1) unless it is satisfied that it would be wholly inappropriate to deal with the person under a preceding paragraph of that subsection.

5 (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 within the meaning of the Children (Care and Protection) Act 1987.

(4) Notwithstanding any other Act or law to the contrary, the Children's Court shall not sentence a person to imprisonment.

10 **Restrictions on the imposition of control orders, etc.**

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

15 (2) An order shall not be made under section 33 (1) (g) whereby a person is committed generally to the control of the Minister administering the Children (Detention Centres) Act 1987 unless the maximum penalty provided by law in respect of the offence is imprisonment for a period of 12 months or more.

20 (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.

Reasons for decision to be given

25 35. When the Children's Court deals with a person under a paragraph of section 33 (1), it shall record—

(a) the reason for which it has dealt with the person under that paragraph; and

30 (b) the reason for which it considered that it would have been wholly inappropriate to deal with the person under any of the preceding paragraphs of section 33 (1).

Compensation under sec. 554 of the Crimes Act 1900

36. If the Children's Court makes an order under a paragraph of section 33 (1) in respect of a person who is of or above the age of 16 years, it may, under section 554 (subsections (1) and (2) excepted) of the Crimes Act 1900, make a further order for the payment of compensation by the person.

Term of control order

37. Subject to section 15 of the Children (Care and Protection) Act 1987 and section 32 of the Children (Detention Centres) Act 1987, an order under section 33 (1) (g) ceases to have effect—
- 10 (a) in the case of an order made generally—at the end of the period of 12 months after it was made; or
- (b) in the case of an order made for a specified period of time—at the end of that period.

Destruction of photographs, finger-prints, etc.

- 15 38. (1) When, in relation to an offence to which this Division applies, the Children's Court—
- (a) finds a person not guilty of the offence; or
- (b) exercises, in respect of a person, the power conferred on it by section 33 (1) (a),
- 20 the Children's Court shall order that any photographs, finger-prints and palm-prints, and any other records (other than records of the Children's Court), relating to the offence be destroyed.
- (2) When, in relation to an offence to which this Division applies, the Children's Court—
- 25 (a) exercises, in respect of a person, the power conferred on it by section 33 (1) (b), (c), (d), (e), (f) or (g); and
- (b) is of the opinion that the circumstances of the case justify its doing so,
- 30 the Children's Court may (whether on the application of the person or otherwise) order that any photographs, finger-prints and palm-prints, and any other records (other than records of the Children's Court), relating to the offence be destroyed.

(3) If the Children's Court makes an order under subsection (1) or (2) in respect of a person, it shall cause a copy of the order to be given to the person and, if the person is a child, to a person responsible for the child.

DIVISION 5—*General*

5 Interpretation

39. 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
- 10 (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;

“Department” means the Department of Youth and Community Services;

15 “Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department.

Variation of recognizance or probation

20 40. (1) In relation to an order of recognizance or 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;
- 25 (c) it may vary any condition of the order in any respect, including (where the person has entered into the recognizance, 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.

30 (2) The Children's Court may not extend the period of an order of recognizance or probation.

*Children (Criminal Proceedings) 1987***Enforcement of conditions of recognizance or probation**

41. (1) If an authorised officer or a member of the police force informs an authorised justice, on oath, that the officer or member of the police force, with reasonable cause, believes that a person—

- 5 (a) has entered into a recognizance, or been released on probation, under section 33 (1); and
- (b) has failed to comply with a condition of the person's recognizance or probation,

the authorised justice—

- 10 (c) may issue a summons for the appearance of the person before—
- (i) in the case of a person who is under the age of 21 years—the Children's Court; or
- (ii) in the case of a person who is of or above the age of 21 years—a Local Court; or
- 15 (d) if the authorised justice is satisfied that the person is unlikely to appear in answer to a summons—may issue a warrant directing the arrest of the person,

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

- 20 (2) An authorised officer, or a member of the police force, may arrest a person in respect of whom a warrant has been issued under subsection (1) (d), whether or not the warrant is in the possession of the officer or member of the police force at the time of arrest.

(3) A person who is arrested under this section shall be brought before—

- 25 (a) in the case of a person who is under the age of 21 years—the Children's Court; or
- (b) in the case of a person who is of or above the age of 21 years—a Local Court,

to be dealt with in accordance with subsection (4) or (5), as the case may
30 require.

Children (Criminal Proceedings) 1987

(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 recognizance or probation, 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 recognizance or was released on probation, as the case may be.

(5) A person who is brought before a Local Court shall, if it is proved that the person has failed to comply with a condition of the person's recognizance or probation, 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 recognizance or was released on probation, 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.

15 Appeals

42. (1) In addition to any other person by whom an appeal may be taken under Part V of the Justices Act 1902 in respect of a decision made by the Children's Court with respect to a person, an appeal may be taken—

(a) by the person; or

20 (b) in the case of a child, by the child or—

(i) by a person responsible for the child;

(ii) by the child's solicitor; or

25 (iii) if the child is in the care or custody of the Minister administering the Children (Care and Protection) Act 1987 or the Director-General—by that Minister or the Director-General,

on behalf of the child.

(2) Notwithstanding sections 102 and 123 of the Justices Act 1902, the Children's Court shall not, as a condition of any recognizance referred to in either of those sections, require a person to lodge a sum of money as security for the prosecution of an appeal from a decision of the Children's Court under this Act.

(3) In this section, a reference to a decision includes a reference to a finding, order, determination and judgment, but does not include a reference to an order made under section 33 (1) (a).

PART 4

MISTAKE IN EXERCISE OF JURISDICTION

Interpretation

43. 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—
 - 10 (i) an order dismissing a charge; or
 - (ii) an order discharging an offender under section 556A (1) (b) of the Crimes Act 1900.

Remission of cases on account of defendant's age

44. 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.

Review of decisions where mistake as to age

45. (1) If—

- 20 (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
- 25 (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.

- 30 (2) A court to which an application for review is made—
 - (a) may set aside or quash the decision;

Children (Criminal Proceedings) 1987

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

5 (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.

10 (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.

Procedures for remitting cases from one court to another

46. (1) A court that remits a case to another court—

15 (a) may, subject to the Bail Act 1978, commit the defendant to custody until the defendant can appear or be brought before the other court; and

20 (b) shall cause to be sent to the clerk or other proper officer of the other court all documents and depositions held by the firstmentioned court in relation to the case.

(2) The deposition of any witness called and examined before a court that remits a case to another court may be accepted as evidence for either party to the case by the other court if the other party consents to its being so accepted or if it is proved on oath—

25 (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;

(b) that—

30 (i) in the case of a deposition taken down in writing—the deposition was taken in the presence of the other party; or

35 (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

Children (Criminal Proceedings) 1987

- (c) that the other party, or the other party's barrister or solicitor, has had full opportunity to examine the witness.

Exclusion of damages and compensation

47. 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.

Section 5 not affected

48. Nothing in this Part limits the operation of section 5.
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10

PART 5**MISCELLANEOUS****Proceedings for offences**

49. Subject to Part 3, proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Bail Act 1978 to prevail

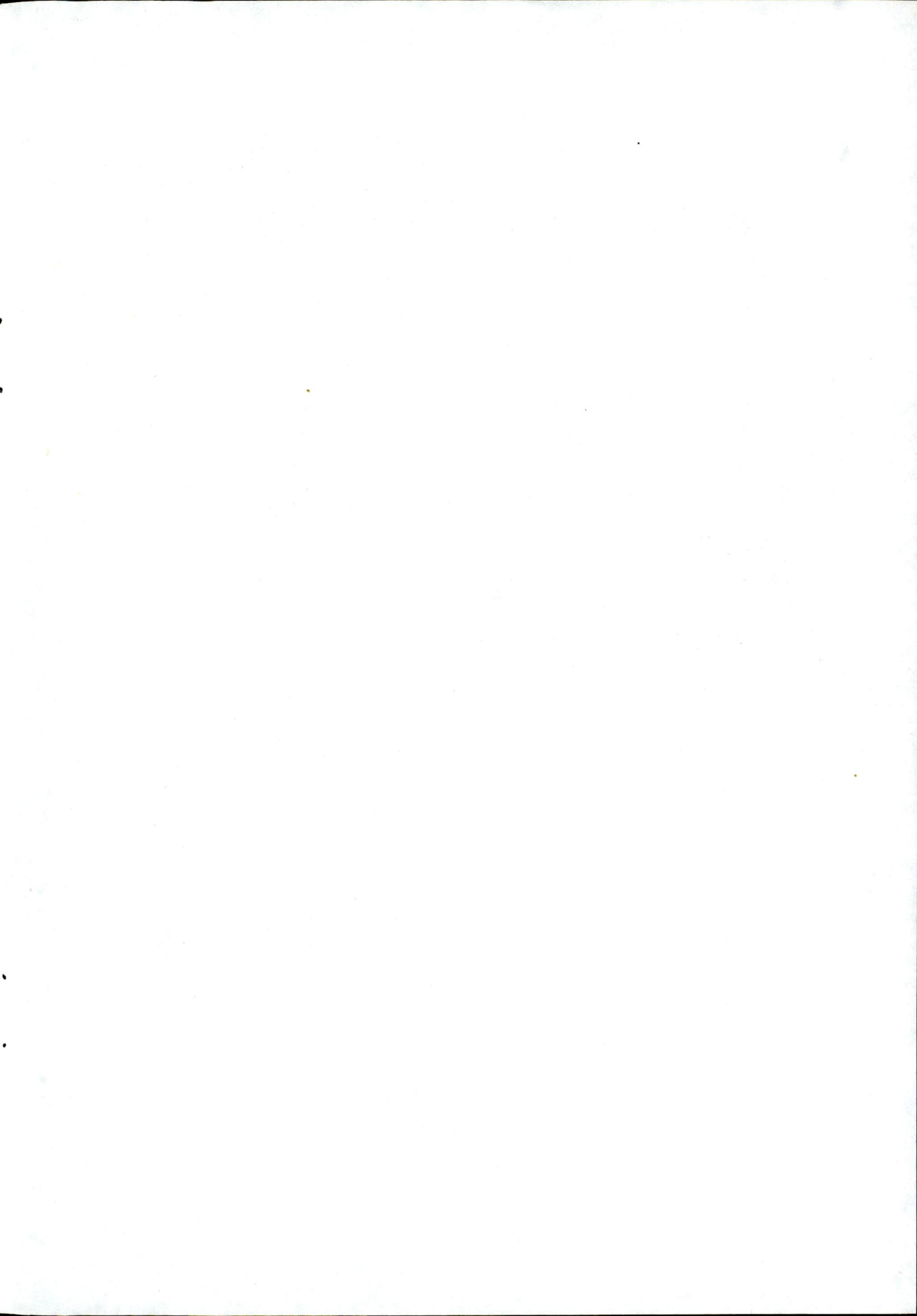
50. The Bail Act 1978 prevails in the event of an inconsistency between that Act and this Act.

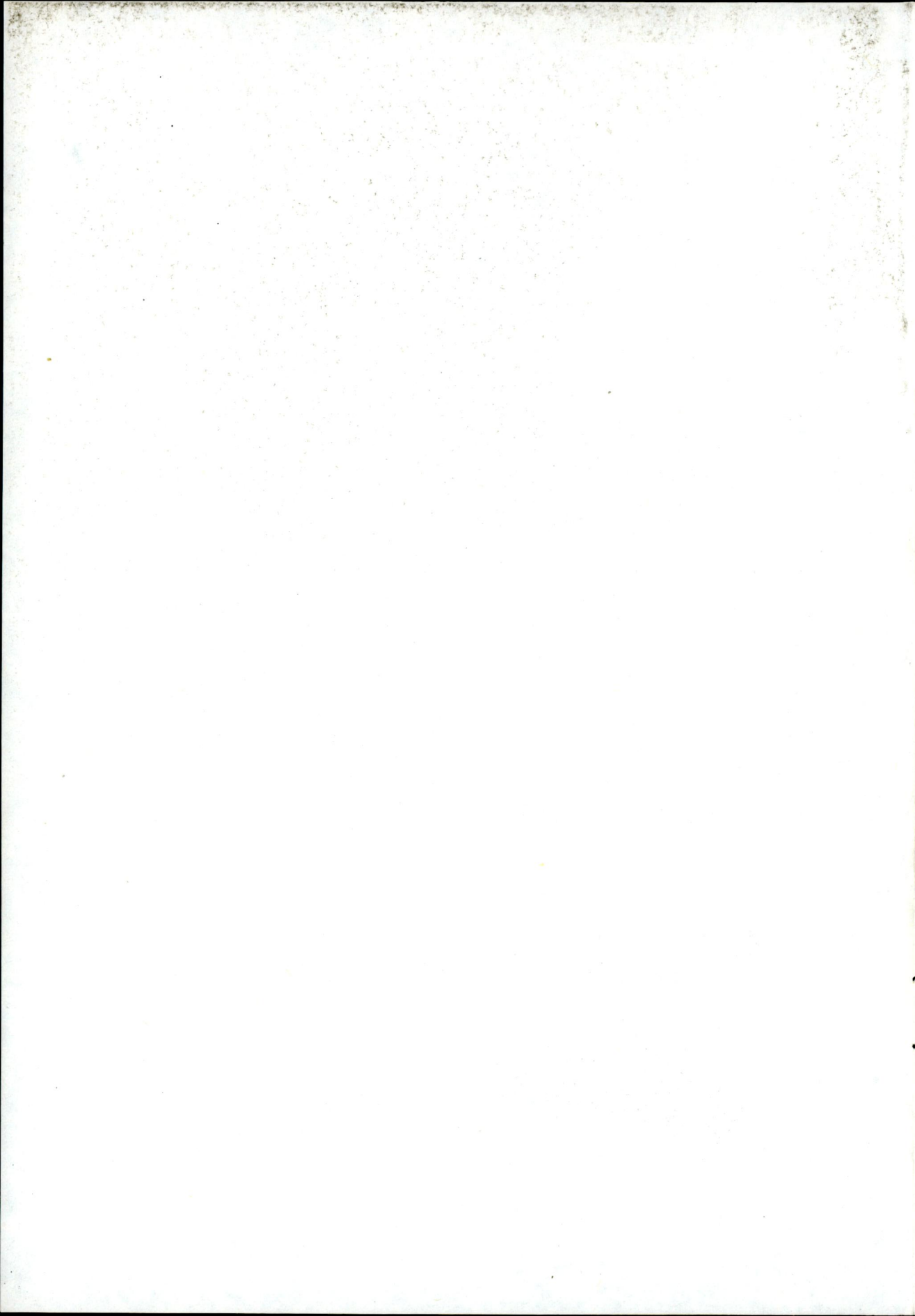
Regulations

- 20 51. (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—
- 25 (a) the kind of conditions that may or may not be imposed in relation to orders made under section 33 (1) (b) and (e); and
- (b) the keeping of records for the purposes of this Act.

Children (Criminal Proceedings) 1987

- (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
 - 5 (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.





CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 No. 55

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2—CRIMINAL PROCEEDINGS GENERALLY

DIVISION 1—*Preliminary*

4. Application
5. Age of criminal responsibility
6. Principles relating to the exercise of criminal jurisdiction
7. Jurisdiction of the Children's Court not to be exercised by Local Courts

DIVISION 2—*Commencement of proceedings*

8. Commencement of proceedings by summons or citation
9. Expedition where child in custody

DIVISION 3—*Hearings*

10. Exclusion of general public from criminal proceedings
11. Publication of names, etc.
12. Courts to explain proceedings to children
13. Admissibility of certain statements, etc.
14. Recording of conviction
15. Evidence of prior offences, etc., not admissible in certain criminal proceedings

DIVISION 4—*Penalties*

16. Application
17. Serious indictable offences
18. Other indictable offences
19. Court may direct imprisonment to be served in a detention centre
20. Remission of persons to the Children's Court for punishment

Children (Criminal Proceedings) 1987

21. Rights of appeal where person remitted for sentence

DIVISION 5—*General*

22. Adjournments
23. Detention in default of payment of fines, etc.
24. Compensation
25. Background reports

PART 3—CRIMINAL PROCEEDINGS IN THE CHILDREN'S COURT

DIVISION 1—*Preliminary*

26. Application
27. Application of Justices Act 1902
28. Jurisdiction of the Children's Court
29. Jurisdiction in respect of 2 or more co-defendants who are not all children

DIVISION 2—*Commencement of proceedings*

30. Commencement of proceedings before the Children's Court

DIVISION 3—*Hearings*

31. Hearing of charges in the Children's Court

DIVISION 4—*Penalties*

32. Application
33. Penalties
34. Restrictions on the imposition of control orders, etc.
35. Reasons for decision to be given
36. Compensation under sec. 554 of the Crimes Act 1900
37. Term of control order
38. Destruction of photographs, finger-prints, etc.

DIVISION 5—*General*

39. Interpretation
40. Variation of recognizance or probation
41. Enforcement of conditions of recognizance or probation
42. Appeals

PART 4—MISTAKE IN EXERCISE OF JURISDICTION

43. Interpretation
44. Remission of cases on account of defendant's age
45. Review of decisions where mistake as to age
46. Procedures for remitting cases from one court to another
47. Exclusion of damages and compensation
48. Section 5 not affected

Children (Criminal Proceedings) 1987

PART 5—MISCELLANEOUS

- 49. Proceedings for offences
 - 50. Bail Act 1978 to prevail
 - 51. Regulations
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CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 No. 55

NEW SOUTH WALES



Act No. 55, 1987

An Act with respect to the conduct of criminal proceedings against children and other young persons. [Assented to 29 May 1987]

Children (Criminal Proceedings) 1987

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:

PART 1
PRELIMINARY

Short title

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

Commencement

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

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

Interpretation

3. (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) a justice employed in the Local Courts Administration, Attorney General's Department;

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

"Children's Court" means the Children's Court of New South Wales constituted by the Children's Court Act 1987;

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

"imprisonment" includes penal servitude;

"parent" has the same meaning as it has in the Children (Care and Protection) Act 1987;

Children (Criminal Proceedings) 1987

“person responsible” has the same meaning as it has in the Children (Care and Protection) Act 1987;

“regulation” means a regulation made under this Act;

“serious indictable offence” means—

- (a) homicide;
- (b) an offence punishable by penal servitude for life;
- (c) an offence arising under section 61B of the Crimes Act 1900; or
- (d) the offence of attempting to commit an offence arising under section 61B of the Crimes Act 1900;

“traffic offence” means an offence arising under a provision of—

- (a) the Motor Traffic Act 1909;
- (b) the Local Government Act 1919;
- (c) the Transport Act 1930;
- (d) the Motor Vehicles (Third Party Insurance) Act 1942; or
- (e) the Recreation Vehicles Act 1983,

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

(2) In this Act, a reference to the commencement of criminal proceedings by way of citation is a reference to the commencement of those proceedings in accordance with the rules of the Children’s Court relating to the commencement of criminal proceedings by way of citation, as referred to in section 30 (2).

(3) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
-

PART 2
CRIMINAL PROCEEDINGS GENERALLY
DIVISION 1—*Preliminary*

Application

4. 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.

Age of criminal responsibility

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

Principles relating to the exercise of criminal jurisdiction

6. A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles:
- (a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them;
 - (b) that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance;
 - (c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption;
 - (d) that it is desirable, wherever possible, to allow a child to reside in his or her own home;
 - (e) that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind.

Jurisdiction of the Children's Court not to be exercised by Local Courts

7. A Local Court may not hear or determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.

Children (Criminal Proceedings) 1987

DIVISION 2—*Commencement of proceedings***Commencement of proceedings by summons or citation**

8. If criminal proceedings are taken against a child in respect of an offence, the proceedings shall be commenced by way of summons or citation unless—

- (a) the offence consists of—
 - (i) an offence arising under section 19, 22A, 24, 35, 52A, 52B, 61B, 61C, 97 or 98 of the Crimes Act 1900; or
 - (ii) an offence arising under Division 2 of Part II of the Drug Misuse and Trafficking Act 1985;
- (b) there are reasonable grounds for believing that the child is likely to commit acts of violence; or
- (c) there are reasonable grounds for believing that the child is unlikely to appear before a court in compliance with a summons or citation.

Expedition where child in custody

9. If criminal proceedings are to be commenced against a child otherwise than by way of summons or citation, and the child is not released on bail under the Bail Act 1978, the child shall be brought before the Children's Court as soon as practicable but, in any case, no later than the next day, or, if the next day is a Saturday, Sunday or public holiday, no later than the next day that is not a Saturday, Sunday or public holiday.

DIVISION 3—*Hearings***Exclusion of general public from criminal proceedings**

10. (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)) who is not directly interested in the proceedings shall, unless the court otherwise directs, be 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 shall, unless the court otherwise directs, be entitled to enter or remain in the place where the proceedings are being heard.

Children (Criminal Proceedings) 1987

(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) 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.

Publication of names, etc.

11. (1) The name of any child—

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

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

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

(3) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

(4) Subsection (1) does not prohibit—

- (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1); or
- (b) the publication or broadcasting of the name of a child—
 - (i) in the case of a child who is under the age of 14 years at the time of publication or broadcasting—with the consent of the Attorney General; or
 - (ii) in the case of a child who is of or above the age of 14 years at the time of publication or broadcasting—with the consent of the child.

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

Courts to explain proceedings to children

12. (1) In any criminal proceedings against a child, a court shall take such measures as are reasonably practicable to ensure that the child understands the proceedings and, in particular, that the child understands—

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

(2) Without limiting the generality of subsection (1), a 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 court's procedure; and
- (b) any decision or ruling made by the court,

in or in relation to the proceedings.

(3) Without limiting the generality of subsection (1), a court shall ensure that the child has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

Admissibility of certain statements, etc.

13. (1) Any statement, confession, admission or information made or given to a member of the police force by a child who is a party to criminal proceedings shall not be admitted in evidence in those proceedings unless—

- (a) there was present at the place where, and throughout the period of time during which, it was made or given—
 - (i) a person responsible for the child;
 - (ii) an adult (other than a member of the police force) who was present with the consent of the person responsible for the child;
 - (iii) in the case of a child who is of or above the age of 16 years—
an adult (other than a member of the police force) who was present with the consent of the child; or
 - (iv) a barrister or solicitor of the child's own choosing; or

Children (Criminal Proceedings) 1987

- (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.

Recording of conviction

14. (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 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 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 a conviction in respect of a child who is charged with an indictable offence that is not disposed of summarily.

Children (Criminal Proceedings) 1987

Evidence of prior offences, etc., not admissible in certain criminal proceedings

15. (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) does not apply to any criminal proceedings before the Children's Court.

(3) Nothing in this Act or any other law prevents a court from taking into account, on the imposition of a penalty in criminal proceedings taken against a person for an offence committed when the person was a child, the fact that the person has been formally cautioned by a member of the police force in respect of an earlier offence.

DIVISION 4—Penalties**Application**

16. 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.

Serious indictable offences

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

Other indictable offences

18. (1) A person to whom this Division applies shall, in relation to an indictable offence other than a serious indictable offence, be dealt with—

- (a) according to law; or
- (b) in accordance with Division 4 of Part 3.

(2) For the purpose of dealing with a person in accordance with Division 4 of Part 3, a court shall have and may exercise the functions of the Children's Court under that Division in the same way as if—

- (a) the court were the Children's Court; and
- (b) the offence were an offence to which that Division applies.

Court may direct imprisonment to be served in a detention centre

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

Remission of persons to the Children's Court for punishment

20. (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 indictable offence, so as to enable the Children's Court to impose a penalty on the person with respect to the offence, but may do so only in respect of a person who is under the age of 21 years.

(2) A court that remits a person under this section—

- (a) may, subject to the Bail Act 1978, commit the person to custody until the person can appear or be brought before the Children's Court; and
- (b) shall cause to be sent to the Registrar of the Children's Court a certificate that—
 - (i) sets out the nature of the offence; and
 - (ii) states that the person has been found guilty of the offence and is being remitted to the Children's Court under this section.

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

Rights of appeal where person remitted for sentence

21. (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 section 122 of the Justices Act 1902, in the same way as if the person had been tried and found guilty of the offence by the Children's Court.

DIVISION 5—General**Adjournments**

22. A court shall not adjourn criminal proceedings against a child for a period exceeding 14 days on any one occasion if, on the adjournment, it proposes to refuse to grant bail under the Bail Act 1978 to the child during the period of the adjournment.

Detention in default of payment of fines, etc.

23. (1) In the application of section 82 (2) of the Justices Act 1902 to a person who has been adjudged—

- (a) by the Children's Court;
- (b) by any other court exercising the functions of the Children's Court under Division 4 of Part 3; or
- (c) in relation to a traffic offence committed by a child within the meaning of section 84A of the Justices Act 1902, by a Local Court,

to pay any fine or penalty, or any sum of money or costs, a requirement under that subsection that the child be imprisoned and kept for a period calculated in accordance with the provisions of that subsection shall be construed as a requirement that the child be committed to the control of the Minister administering the Children (Detention Centres) Act 1987 for a period so calculated.

(2) An order of a court whereby a child has been adjudged to pay any fine or penalty, or any sum of money or costs, shall, in the event of default, be deemed to be an order under section 33 (1) (g).

Compensation

24. A court shall not, in or in connection with any criminal proceedings against a child—

- (a) order the child to pay compensation; or
- (b) require the child to pay compensation under the conditions of any other order made by the court in respect of the child,

if the child is under the age of 16 years.

Background reports

25. (1) This section applies to a person—

- (a) who has pleaded guilty to an offence in, or has been found guilty or convicted of an offence 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) the prosecutor has tendered in evidence a background report, prepared in accordance with the regulations, with respect to the circumstances surrounding the commission of the offence;
 - (b) the prosecutor has caused copies of the report to be 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***Application**

26. (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.

Application of Justices Act 1902

27. (1) Subject to Part 2 and to the rules of the Children's Court, the Justices Act 1902 applies to—

- (a) the Children's Court; and
- (b) any criminal proceedings before the Children's Court,

in the same way as it applies to a justice or justices and to criminal proceedings before a justice or justices.

(2) In the event of an inconsistency between this Part and the Justices Act 1902, this Part shall prevail to the extent of the inconsistency.

Jurisdiction of the Children's Court

28. (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 indictable offence; and
- (b) committal proceedings in respect of any indictable offence (including a serious 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.

Children (Criminal Proceedings) 1987

(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 Motor Traffic Act 1909 or the Transport Act 1930 authorising the person to drive the motor vehicle to which the offence relates.

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

29. (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) with the consent of the person in respect of whom it has jurisdiction—may continue the hearing of the charge against that person without any such adjournment.

(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.

Children (Criminal Proceedings) 1987

(3) The Children's Court shall not hear and determine committal proceedings as referred to in subsection (2) unless—

- (a) the elder of the persons referred to in that subsection is less than 3 years older than the younger of those persons; and
- (b) the Children's Court is of the opinion that the proceedings should be so heard and determined.

(4) For the purpose of exercising its functions under subsection (2), the Children's Court—

- (a) shall have, and may exercise, the jurisdiction of a Local Court; 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*

Commencement of proceedings before the Children's Court

30. (1) The Governor may, in exercising the power conferred by section 23 of the Children's Court Act 1987, make rules, not inconsistent with this Act, for or with respect to the manner in which criminal proceedings may be commenced in the Children's Court.

(2) Without limiting the generality of subsection (1), the Governor may, in exercising the power referred to in that subsection, make rules, not inconsistent with this Act, for the commencement of criminal proceedings by way of citation.

(3) A rule referred to in this section—

- (a) may or may not require the issue of process out of the Children's Court; and
- (b) may modify or exclude the provisions of the Justices Act 1902 relating to the commencement of criminal proceedings.

DIVISION 3—*Hearings*

Hearing of charges in the Children's Court

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

Children (Criminal Proceedings) 1987

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

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

(3) Notwithstanding subsection (1)—

- (a) if a person is charged before the Children's Court with an indictable offence (other than an offence that is punishable summarily without the consent of the accused); and
- (b) the Children's Court is of the opinion, after all the evidence for the prosecution has been taken—
 - (i) that, having regard to all the evidence before the Children's Court, the evidence is capable of satisfying a jury beyond reasonable doubt that the person has committed an indictable offence; and
 - (ii) that the charge may not properly be disposed of in a summary manner,

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

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

DIVISION 4—*Penalties***Application**

32. 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.

Penalties

33. (1) If the Children's Court finds a person guilty of an offence to which this Division applies, it shall do one of the following things:

- (a) it may make an order dismissing the charge, or it may make an order dismissing the charge and may administer a caution to the person;
- (b) it may make an order releasing the person on condition that the person enters into a recognizance, with or without sureties, to comply with such conditions as it may determine for such period of time, not exceeding 12 months, as it thinks fit;
- (c) it may make an order imposing on the person a fine, not exceeding—
 - (i) the maximum fine prescribed by law in respect of the offence; or
 - (ii) \$500,whichever is the lesser;
- (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 12 months, as it thinks fit;
- (f) it may, subject to the provisions of the Children (Community Service Orders) Act 1987, make an order under section 5 of that Act requiring the person to perform community service work;
- (g) it may make an order committing the person—
 - (i) generally; or
 - (ii) for such period of time (not exceeding 2 years) as it thinks fit, to the control of the Minister administering the Children (Detention Centres) Act 1987.

Children (Criminal Proceedings) 1987

(2) The Children's Court shall not deal with a person under a paragraph of subsection (1) unless it is satisfied that it would be wholly inappropriate to deal with the person under a preceding paragraph of that subsection.

(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 within the meaning of the Children (Care and Protection) Act 1987.

(4) Notwithstanding any other Act or law to the contrary, the Children's Court shall not sentence a person to imprisonment.

Restrictions on the imposition of control orders, etc.

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

(2) An order shall not be made under section 33 (1) (g) whereby a person is committed generally to the control of the Minister administering the Children (Detention Centres) Act 1987 unless the maximum penalty provided by law in respect of the offence is imprisonment for a period of 12 months or more.

(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.

Reasons for decision to be given

35. When the Children's Court deals with a person under a paragraph of section 33 (1), 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 any of the preceding paragraphs of section 33 (1).

*Children (Criminal Proceedings) 1987***Compensation under sec. 554 of the Crimes Act 1900**

36. If the Children's Court makes an order under a paragraph of section 33 (1) in respect of a person who is of or above the age of 16 years, it may, under section 554 (subsections (1) and (2) excepted) of the Crimes Act 1900, make a further order for the payment of compensation by the person.

Term of control order

37. Subject to section 15 of the Children (Care and Protection) Act 1987 and section 32 of the Children (Detention Centres) Act 1987, an order under section 33 (1) (g) ceases to have effect—

- (a) in the case of an order made generally—at the end of the period of 12 months after it was made; or
- (b) in the case of an order made for a specified period of time—at the end of that period.

Destruction of photographs, finger-prints, etc.

38. (1) When, in relation to an offence to which this Division applies, the Children's Court—

- (a) finds a person not guilty of the offence; or
- (b) exercises, in respect of a person, the power conferred on it by section 33 (1) (a),

the Children's Court shall order that any photographs, finger-prints and palm-prints, and any other records (other than records of the Children's Court), relating to the offence be destroyed.

(2) When, in relation to an offence to which this Division applies, the Children's Court—

- (a) exercises, in respect of a person, the power conferred on it by section 33 (1) (b), (c), (d), (e), (f) or (g); and
- (b) is of the opinion that the circumstances of the case justify its doing so,

the Children's Court may (whether on the application of the person or otherwise) order that any photographs, finger-prints and palm-prints, and any other records (other than records of the Children's Court), relating to the offence be destroyed.

(3) If the Children's Court makes an order under subsection (1) or (2) in respect of a person, it shall cause a copy of the order to be given to the person and, if the person is a child, to a person responsible for the child.

DIVISION 5—*General*

Interpretation

39. 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;

“Department” means the Department of Youth and Community Services;

“Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department.

Variation of recognizance or probation

40. (1) In relation to an order of recognizance or 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 recognizance, 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.

(2) The Children's Court may not extend the period of an order of recognizance or probation.

Enforcement of conditions of recognizance or probation

41. (1) If an authorised officer or a member of the police force informs an authorised justice, on oath, that the officer or member of the police force, with reasonable cause, believes that a person—

- (a) has entered into a recognizance, or been released on probation, under section 33 (1); and
- (b) has failed to comply with a condition of the person's recognizance or probation,

the authorised justice—

- (c) may issue a summons for the appearance of the person before—
 - (i) in the case of a person who is under the age of 21 years—the Children's Court; or
 - (ii) in the case of a person who is of or above the age of 21 years—a Local Court; or
- (d) if the authorised justice is satisfied that the person is unlikely to appear in answer to a summons—may issue a warrant directing the arrest of the person,

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

(2) An authorised officer, or a member of the police force, may arrest a person in respect of whom a warrant has been issued under subsection (1) (d), whether or not the warrant is in the possession of the officer or member of the police force at the time of arrest.

(3) A person who is arrested under this section shall be brought before—

- (a) in the case of a person who is under the age of 21 years—the Children's Court; or
- (b) in the case of a person who is of or above the age of 21 years—a Local Court,

to be dealt with in accordance with subsection (4) or (5), as the case may require.

(4) A person who is brought before the Children's Court shall, if it is proved that the person has failed to comply with a condition of the person's recognizance or probation, 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 recognizance or was released on probation, as the case may be.

(5) A person who is brought before a Local Court shall, if it is proved that the person has failed to comply with a condition of the person's recognizance or probation, 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 recognizance or was released on probation, 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.

Appeals

42. (1) In addition to any other person by whom an appeal may be taken under Part V of the Justices Act 1902 in respect of a decision made by the Children's Court with respect to a person, an appeal may be taken—

- (a) by the person; or
- (b) in the case of a child, by the child or—
 - (i) by a person responsible for the child;
 - (ii) by the child's solicitor; or
 - (iii) if the child is in the care or custody of the Minister administering the Children (Care and Protection) Act 1987 or the Director-General—by that Minister or the Director-General, on behalf of the child.

(2) Notwithstanding sections 102 and 123 of the Justices Act 1902, the Children's Court shall not, as a condition of any recognizance referred to in either of those sections, require a person to lodge a sum of money as security for the prosecution of an appeal from a decision of the Children's Court under this Act.

(3) In this section, a reference to a decision includes a reference to a finding, order, determination and judgment, but does not include a reference to an order made under section 33 (1) (a).

PART 4

MISTAKE IN EXERCISE OF JURISDICTION

Interpretation

43. 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 556A (1) (b) of the Crimes Act 1900.

Remission of cases on account of defendant's age

44. 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.

Review of decisions where mistake as to age

45. (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;

Children (Criminal Proceedings) 1987

- (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.

Procedures for remitting cases from one court to another

46. (1) A court that remits a case to another court—

- (a) may, subject to the Bail Act 1978, commit the defendant to custody until the defendant can appear or be brought before the other court; and
- (b) shall cause to be sent to the clerk or other proper officer of the other court all documents and depositions held by the firstmentioned court in relation to the case.

(2) The deposition of any witness called and examined before a court that remits a case to another court may be accepted as evidence for either party to the case 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;
- (b) that—
 - (i) in the case of a deposition taken down in writing—the deposition was taken in the presence of the other party; or
 - (ii) in the case of a deposition that is in the form of a transcript of the record made, by a means other than writing, of the evidence of the witness—the record so made is a true record of that evidence, and was made in the presence of the other party, and the transcript is a correct transcript of the record so made; and

- (c) that the other party, or the other party's barrister or solicitor, has had full opportunity to examine the witness.

Exclusion of damages and compensation

47. 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.

Section 5 not affected

48. Nothing in this Part limits the operation of section 5.
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PART 5**MISCELLANEOUS****Proceedings for offences**

49. Subject to Part 3, proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Bail Act 1978 to prevail

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

Regulations

51. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the kind of conditions that may or may not be imposed in relation to orders made under section 33 (1) (b) and (e); and
- (b) the keeping of records for the purposes of this Act.

Children (Criminal Proceedings) 1987

- (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.



