

FIRST PRINT

CHILDREN'S COURT 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 the Community Welfare Act 1982 relating to the establishment of a Children's Court of New South Wales.

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 to be appointed by the Governor-in-Council.

Clause 3 is an interpretation provision for the purposes of the proposed Act. In particular, "authorised Magistrate" is defined to mean a Magistrate who is authorised to exercise the jurisdiction of the proposed Children's Court by virtue of a proclamation referred to in clause 10.

PART 2—CONSTITUTION OF THE COURT

Clause 4 constitutes a court of record to be known as the Children's Court of New South Wales ("the Court").

Clause 5 makes provision with respect to the seal of the Court.

Clause 6 provides that the Court shall be comprised of such members as the Chief Magistrate may from time to time appoint.

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Clause 7 provides for the appointment of persons as members of the Court, being persons who—

- (a) are Magistrates; and
- (b) have, in the opinion of the Chief Magistrate—
 - (i) such training in the social or behavioural sciences;
 - (ii) such experience in dealing with children; or
 - (iii) such personal qualities,

as is or are appropriate for a member of the Court.

Clause 8 provides for the appointment of a person as the senior member of the Court.

Clause 9 provides for the appointment of a person as the acting senior member of the Court during vacancies in the office of senior member and during periods when the senior member is absent.

Clause 10 enables the Governor-in-Council, by proclamation published in the Gazette, to declare that the jurisdiction of the Court may be exercised by a Magistrate sitting at such place as may be specified in the proclamation.

Clause 11 provides for the employment of a Registrar of the Court and of such other staff as may be necessary to enable the Court to exercise its jurisdiction.

PART 3—JURISDICTION OF THE COURT

Clause 12 provides that the Court shall have such jurisdiction as may be conferred or imposed on it by or under the proposed Act or any other Act, and further provides that the Court may exercise its jurisdiction throughout the whole of New South Wales.

Clause 13 enables the jurisdiction of the Court to be exercised by a member of the Court or by an authorised Magistrate sitting alone.

Clause 14 enables more than one sitting of the Court to be held at the same time.

Clause 15 enables the Court to make such orders as it thinks appropriate in relation to all matters in respect of which it has jurisdiction.

PART 4—MISCELLANEOUS

Clause 16 imposes certain administrative functions on the senior member of the Court and further provides that, in relation to the exercise of those functions, the senior member is to be subject to the control and direction of the Chief Magistrate.

Clause 17 provides for the delegation of functions by the senior member of the Court.

Clause 18 requires the senior member of the Court to prepare reports in relation to the activities of the Court for submission to the Attorney General.

Clause 19 makes provision with respect to the buildings and rooms in which sittings of the Court may be held.

Clause 20 enables the Court to transfer the hearing of a matter to a sitting of the Court at some other place so as to ensure that the matter may be more conveniently or fairly heard.

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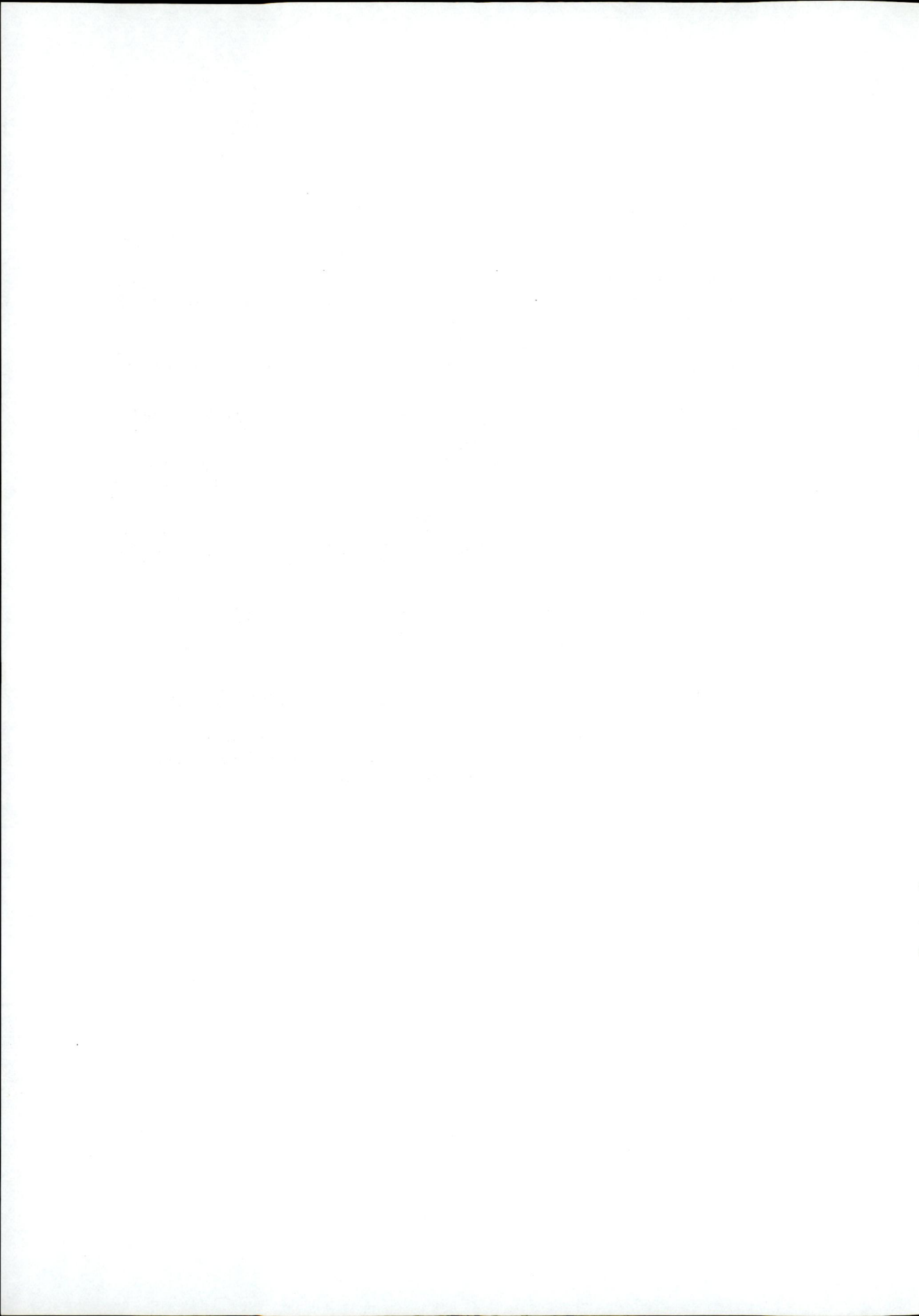
Clause 21 enables the Court to impose a penalty of \$200 or imprisonment for 10 days on any person who commits contempt in the face of the Court.

Clause 22 requires judicial notice to be taken of the signature of the senior member of the Court, a member of the Court, an authorised Magistrate or the Registrar of the Court where appearing on a document issuing out of the Court.

Clause 23 enables the Governor-in-Council to make rules for the purposes of the proposed Act including, in particular, rules with respect to the practice and procedure of the Court.

Schedule 1 makes provision with respect to the members of the Court and, in particular—

- (a) provides that a member of the Court does not cease to be a Magistrate merely because of the member's having been appointed as a member of the Court (clause 1);
 - (b) provides that a member of the Court shall hold office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment (clause 2);
 - (c) provides for the remuneration of members of the Court in accordance with the Statutory and Other Offices Remuneration Act 1975 (clause 3);
 - (d) excludes members of the Court from the operation of the Public Service Act 1979 (clause 4);
 - (e) specifies the circumstances under which a member of the Court shall be deemed to have vacated office (clause 5); and
 - (f) provides that a person does not cease to be a Magistrate merely because of his or her resignation from office as a member of the Court or the expiration of his or her term of office as a member of the Court (clause 6).
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CHILDREN'S COURT BILL 1987

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CHILDREN'S COURT BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

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

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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's Court Act 1987".

Commencement

- 10 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 as may be appointed by the Governor and notified by proclamation published in the Gazette.

15 **Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

20 "authorised Magistrate" means a Magistrate who is authorised to exercise the jurisdiction of the Court by virtue of a proclamation in force under section 10;

"rule" means a rule made under this Act;

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

- (2) In this Act—

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

CONSTITUTION OF THE COURT

Constitution of the Court

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

Seal of the Court

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

10 **Composition of the Court**

6. The Court shall be composed of such members as the Chief
Magistrate may from time to time appoint.

Appointment of members of the Court

7. (1) The Chief Magistrate may, by instrument in writing, appoint any
15 qualified person to be a member of the Court.

(2) A person is qualified to be appointed as a member of the Court if the
person—

(a) is a Magistrate; and

(b) has, in the opinion of the Chief Magistrate—

20 (i) such training in the social or behavioural sciences;

(ii) such experience in dealing with children; or

(iii) such personal qualities,

as is or are appropriate for a member of the Court.

(3) Schedule 1 has effect with respect to the members of the Court.

25 **Senior member of the Court**

8. (1) The Chief Magistrate, with the concurrence of the Attorney
General, may, by instrument in writing, appoint a member of the Court as
senior member.

(2) Except as provided by subsection (3), the senior member of the Court
30 holds office until the senior member ceases to be a member of the Court.

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(3) The senior member of the Court may, with the approval of the Chief Magistrate, resign office as the senior member without resigning office as a member of the Court.

Acting senior member of the Court

5 9. (1) The Chief Magistrate may, by instrument in writing, appoint a member of the Court, or a person qualified to be appointed as a member of the Court, to be acting senior member of the Court—

(a) during any vacancy in the office of senior member; or

(b) during any period for which the senior member is absent from duty.

10 (2) While acting as the senior member of the Court, the acting senior member—

(a) shall have and may exercise—

(i) the functions of the senior member; and

15 (ii) in the case of a person who is not a member of the Court—the functions of a member of the Court; and

(b) shall be entitled to be paid the same remuneration as the senior member.

Authorised Magistrates

20 10. (1) The Governor may, by proclamation published in the Gazette, declare that the jurisdiction of the Court may be exercised, in accordance with such conditions as may be specified in the proclamation, by any Magistrate sitting at a place so specified.

(2) The Governor may, by proclamation published in the Gazette, revoke a proclamation under subsection (1).

25 Registrar and other officers of the Court

11. A Registrar of the Court, and such other staff as may be necessary to enable the Court to exercise its jurisdiction, shall be employed under the Public Service Act 1979.

PART 3**JURISDICTION OF THE COURT****Jurisdiction generally**

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

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

Single member, etc., to exercise the jurisdiction of the Court

13. The jurisdiction of the Court shall be exercised—

- 10 (a) by a member of the Court; or
(b) by an authorised Magistrate,
sitting alone.

Sittings of the Court

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

15 Orders of the Court

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

PART 4**MISCELLANEOUS**

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Functions of the senior member of the Court

16. (1) The senior member of the Court shall—

- (a) administer the Court;
(b) arrange sittings of the Court;
25 (c) convene, at least once every 6 months, a meeting of members of the Court and such other persons as the senior member thinks fit; and

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(d) confer regularly with community groups and social agencies on matters involving children and the Court.

(2) The senior member of the Court may require specified functions of members of the Court to be exercised by specified members or members of a specified class, and any member of the Court of whom a requirement is made under this subsection shall comply with the requirement.

(3) The senior member of the Court shall, in the exercise of a function under this section, be subject to the control and direction of the Chief Magistrate.

10 Delegation

17. (1) The senior member of the Court may delegate to—

- (a) a member of the Court; or
- (b) an authorised Magistrate,

the exercise of any of the senior member's functions under section 16.

15 (2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the senior member of the Court.

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

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the senior member of the Court.

(5) A delegation under this section does not prevent the exercise of a function by the senior member of the Court.

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

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Reports

18. (1) The senior member of the Court shall submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on the activities of the Court.
- 5 (2) A report shall deal with such matters as the Attorney General directs and with such other matters as the senior member of the Court considers appropriate to include in the report.

Venue

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

Change of venue

20. If it appears to the Court that any matter within the jurisdiction of the Court can be more conveniently or fairly heard at a sitting of the Court at some other place, the Court may—
- (a) adjourn the hearing of the matter, whether any party appears or not;
- (b) remand any person charged before it to a sitting of the Court at some other place specified by it; and
- 25 (c) appoint a day for the hearing.

Contempt

21. (1) A person shall not commit contempt in the face of the Court.
Penalty: \$200 or imprisonment for 10 days.
- (2) Proceedings for contempt shall be dealt with summarily before the
30 Children's Court.

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(3) For the purpose of dealing with proceedings for contempt by a person in respect of whom the Children's Court would not, but for this subsection, have jurisdiction, the Children's Court—

- (a) shall have, and may exercise, the jurisdiction of a Local Court; and
 5 (b) shall not have, and may not exercise, the jurisdiction of the Children's Court,

as regards that person.

Judicial notice of signatures

22. Judicial notice shall be taken of the signatures of—

- 10 (a) the senior member of the Court;
 (b) a member of the Court;
 (c) an authorised Magistrate; and
 (d) the Registrar of the Court,

where appearing on a document issuing out of the Court.

15 Rules

23. (1) The Governor may make rules, 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
 20 to—

- (a) the practice and procedure of the Court; and
 (b) courses of training to be attended by members of the Court and persons proposed to be appointed as members of the Court.

(2) A provision of a rule may—

- 25 (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,

30 or may do any combination of those things.

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SCHEDULE 1

(Sec. 7)

PROVISIONS RELATING TO THE MEMBERS OF THE COURT

Magisterial status, etc., not affected

- 5 1. (1) A member of the Court does not cease to be a Magistrate, nor is the member's rank, title, status and precedence as a Magistrate affected, merely because of the member's appointment as a member of the Court.

(2) The service of a member of the Court in his or her capacity as such a member shall, for all purposes, be taken to be service as a Magistrate.

10 **Term of office**

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

Remuneration

- 15 3. A member of the Court is entitled to be paid—

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

20 **Public Service Act 1979 not to apply to members of the Court**

4. The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Court and a member of the Court is not, as a member of the Court, subject to that Act.

Casual vacancies

- 25 5. A person shall be deemed to have vacated office as a member of the Court if the person—

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

Appointment as Magistrate unaffected by resignation, etc.

- 30 6. A person does not cease to be a Magistrate merely because of—

- (a) his or her resignation from office as a member of the Court; or
- (b) the expiration of his or her term of office as a member of the Court.



CHILDREN'S COURT BILL 1987

NEW SOUTH WALES



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- 22. Judicial notice of signatures
- 23. Rules

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE COURT

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

Children's Court 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 I
PRELIMINARY

Short title

1. This Act may be cited as the "Children's Court Act 1987".

Commencement

- 10 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 as may be appointed by the Governor and notified by proclamation published in the Gazette.

15 **Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

20 "authorised Magistrate" means a Magistrate who is authorised to exercise the jurisdiction of the Court by virtue of a proclamation in force under section 10;

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

"rule" means a rule made under this Act;

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

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

30 (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2

CONSTITUTION OF THE COURT

Constitution of the Court

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

Seal of the Court

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

10 **Composition of the Court**

6. The Court shall be composed of such members as the Chief
Magistrate may from time to time appoint.

Appointment of members of the Court

7. (1) The Chief Magistrate may, by instrument in writing, appoint any
15 qualified person to be a member of the Court.

(2) A person is qualified to be appointed as a member of the Court if the
person—

(a) is a Magistrate; and

(b) has, in the opinion of the Chief Magistrate—

20 (i) such training in the social or behavioural sciences;

(ii) such experience in dealing with children; or

(iii) such personal qualities,

as is or are appropriate for a member of the Court.

(3) Schedule 1 has effect with respect to the members of the Court.

25 **Senior member of the Court**

8. (1) The Chief Magistrate, with the concurrence of the Attorney
General, may, by instrument in writing, appoint a member of the Court as
senior member.

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(2) Except as provided by subsection (3), the senior member of the Court holds office until the senior member ceases to be a member of the Court.

(3) The senior member of the Court may, with the approval of the Chief Magistrate, resign office as the senior member without resigning office as a member of the Court.

Acting senior member of the Court

9. (1) The Chief Magistrate may, by instrument in writing, appoint a member of the Court, or a person qualified to be appointed as a member of the Court, to be acting senior member of the Court—

- 10 (a) during any vacancy in the office of senior member; or
 (b) during any period for which the senior member is absent from duty.

(2) While acting as the senior member of the Court, the acting senior member—

- (a) shall have and may exercise—
 15 (i) the functions of the senior member; and
 (ii) in the case of a person who is not a member of the Court—the functions of a member of the Court; and
 (b) shall be entitled to be paid the same remuneration as the senior member.

20 **Authorised Magistrates**

10. (1) The Governor may, by proclamation published in the Gazette, declare that the jurisdiction of the Court may be exercised, in accordance with such conditions as may be specified in the proclamation, by any Magistrate sitting at a place so specified.

25 (2) The Governor may, by proclamation published in the Gazette, revoke a proclamation under subsection (1).

Registrar and other officers of the Court

11. A Registrar of the Court, and such other staff as may be necessary to enable the Court to exercise its jurisdiction, shall be employed under the
 30 Public Service Act 1979.

PART 3

JURISDICTION OF THE COURT

Jurisdiction generally

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

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

Single member, etc., to exercise the jurisdiction of the Court

13. The jurisdiction of the Court shall be exercised—

- 10 (a) by a member of the Court; or
(b) by an authorised Magistrate,
sitting alone.

Sittings of the Court

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

15 **Orders of the Court**

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

PART 420 **MISCELLANEOUS****Functions of the senior member of the Court**

16. (1) The senior member of the Court shall—

- (a) administer the Court;
(b) arrange sittings of the Court;
25 (c) convene, at least once every 6 months, a meeting of members of the
Court and such other persons as the senior member thinks fit; and

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(d) confer regularly with community groups and social agencies on matters involving children and the Court.

(2) The senior member of the Court may require specified functions of members of the Court to be exercised by specified members or members of a specified class, and any member of the Court of whom a requirement is made under this subsection shall comply with the requirement.

(3) The senior member of the Court shall, in the exercise of a function under this section, be subject to the control and direction of the Chief Magistrate.

10 Delegation

17. (1) The senior member of the Court may delegate to—

- (a) a member of the Court; or
- (b) an authorised Magistrate,

the exercise of any of the senior member's functions under section 16.

15 (2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the senior member of the Court.

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

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the senior member of the Court.

(5) A delegation under this section does not prevent the exercise of a function by the senior member of the Court.

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

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Reports

18. (1) The senior member of the Court shall submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on the activities of the Court.

- 5 (2) A report shall deal with such matters as the Attorney General directs and with such other matters as the senior member of the Court considers appropriate to include in the report.

Venue

19. (1) Sittings of the Court shall be held—

- 10 (a) in a building or room approved for that purpose by the Attorney General; or
- (b) if, in the opinion of the Court in a particular case, it is expedient that a sitting of the Court be held in some other building or room, in that other building or room.

- 15 (2) If a room used or occupied by another court is approved under this section, sittings of the Court shall not be held in the room while the ordinary business of that other court is being transacted.

Change of venue

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

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

Contempt

21. (1) A person shall not commit contempt in the face of the Court.

Penalty: \$200 or imprisonment for 10 days.

- (2) Proceedings for contempt shall be dealt with summarily before the
30 Children's Court.

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(3) For the purpose of dealing with proceedings for contempt by a person in respect of whom the Children's Court would not, but for this subsection, have jurisdiction, the Children's Court—

- (a) shall have, and may exercise, the jurisdiction of a Local Court; and
- 5 (b) shall not have, and may not exercise, the jurisdiction of the Children's Court,

as regards that person.

Judicial notice of signatures

22. Judicial notice shall be taken of the signatures of—

- 10 (a) the senior member of the Court;
- (b) a member of the Court;
- (c) an authorised Magistrate; and
- (d) the Registrar of the Court,

where appearing on a document issuing out of the Court.

15 Rules

23. (1) The Governor may make rules, 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
20 to—

- (a) the practice and procedure of the Court; and
- (b) courses of training to be attended by members of the Court and persons proposed to be appointed as members of the Court.

(2) A provision of a rule may—

- 25 (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,

30 or may do any combination of those things.

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SCHEDULE 1

(Sec. 7)

PROVISIONS RELATING TO THE MEMBERS OF THE COURT

Magisterial status, etc., not affected

5 1. (1) A member of the Court does not cease to be a Magistrate, nor is the member's rank, title, status and precedence as a Magistrate affected, merely because of the member's appointment as a member of the Court.

(2) The service of a member of the Court in his or her capacity as such a member shall, for all purposes, be taken to be service as a Magistrate.

10 Term of office

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

Remuneration

15 3. A member of the Court is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Attorney General may from time to time determine in respect of the member.

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

4. The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Court and a member of the Court is not, as a member of the Court, subject to that Act.

Casual vacancies

25 5. A person shall be deemed to have vacated office as a member of the Court if the person—

(a) ceases to be a Magistrate; or

(b) resigns office by instrument in writing addressed to the Chief Magistrate.

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS OF THE COURT—*continued*

Appointment as Magistrate unaffected by resignation, etc.

6. A person does not cease to be a Magistrate merely because of—
- (a) his or her resignation from office as a member of the Court; or
 - (b) the expiration of his or her term of office as a member of the Court.

CHILDREN'S COURT ACT 1987 No. 53

NEW SOUTH WALES



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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE COURT

CHILDREN'S COURT ACT 1987 No. 53

NEW SOUTH WALES



Act No. 53, 1987

An Act to establish a Children's Court of New South Wales. [Assented to
29 May 1987]

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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's Court 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 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—

"authorised Magistrate" means a Magistrate who is authorised to exercise the jurisdiction of the Court by virtue of a proclamation in force under section 10;

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

"rule" means a rule made under this Act;

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

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
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PART 2

CONSTITUTION OF THE COURT

Constitution of the Court

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

Seal of the Court

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

Composition of the Court

6. The Court shall be composed of such members as the Chief Magistrate may from time to time appoint.

Appointment of members of the Court

7. (1) The Chief Magistrate may, by instrument in writing, appoint any qualified person to be a member of the Court.

(2) A person is qualified to be appointed as a member of the Court if the person—

- (a) is a Magistrate; and
- (b) has, in the opinion of the Chief Magistrate—
 - (i) such training in the social or behavioural sciences;
 - (ii) such experience in dealing with children; or
 - (iii) such personal qualities,

as is or are appropriate for a member of the Court.

(3) Schedule 1 has effect with respect to the members of the Court.

Senior member of the Court

8. (1) The Chief Magistrate, with the concurrence of the Attorney General, may, by instrument in writing, appoint a member of the Court as senior member.

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(2) Except as provided by subsection (3), the senior member of the Court holds office until the senior member ceases to be a member of the Court.

(3) The senior member of the Court may, with the approval of the Chief Magistrate, resign office as the senior member without resigning office as a member of the Court.

Acting senior member of the Court

9. (1) The Chief Magistrate may, by instrument in writing, appoint a member of the Court, or a person qualified to be appointed as a member of the Court, to be acting senior member of the Court—

- (a) during any vacancy in the office of senior member; or
- (b) during any period for which the senior member is absent from duty.

(2) While acting as the senior member of the Court, the acting senior member—

- (a) shall have and may exercise—
 - (i) the functions of the senior member; and
 - (ii) in the case of a person who is not a member of the Court—the functions of a member of the Court; and
- (b) shall be entitled to be paid the same remuneration as the senior member.

Authorised Magistrates

10. (1) The Governor may, by proclamation published in the Gazette, declare that the jurisdiction of the Court may be exercised, in accordance with such conditions as may be specified in the proclamation, by any Magistrate sitting at a place so specified.

(2) The Governor may, by proclamation published in the Gazette, revoke a proclamation under subsection (1).

Registrar and other officers of the Court

11. A Registrar of the Court, and such other staff as may be necessary to enable the Court to exercise its jurisdiction, shall be employed under the Public Service Act 1979.

PART 3

JURISDICTION OF THE COURT

Jurisdiction generally

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

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

Single member, etc., to exercise the jurisdiction of the Court

13. The jurisdiction of the Court shall be exercised—

- (a) by a member of the Court; or
- (b) by an authorised Magistrate,

sitting alone.

Sittings of the Court

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

Orders of the Court

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

PART 4

MISCELLANEOUS

Functions of the senior member of the Court

16. (1) The senior member of the Court shall—

- (a) administer the Court;
- (b) arrange sittings of the Court;
- (c) convene, at least once every 6 months, a meeting of members of the Court and such other persons as the senior member thinks fit; and

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(d) confer regularly with community groups and social agencies on matters involving children and the Court.

(2) The senior member of the Court may require specified functions of members of the Court to be exercised by specified members or members of a specified class, and any member of the Court of whom a requirement is made under this subsection shall comply with the requirement.

(3) The senior member of the Court shall, in the exercise of a function under this section, be subject to the control and direction of the Chief Magistrate.

Delegation

17. (1) The senior member of the Court may delegate to—

- (a) a member of the Court; or
- (b) an authorised Magistrate,

the exercise of any of the senior member's functions under section 16.

(2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the senior member of the Court.

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

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the senior member of the Court.

(5) A delegation under this section does not prevent the exercise of a function by the senior member of the Court.

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

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Reports

18. (1) The senior member of the Court shall submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on the activities of the Court.

(2) A report shall deal with such matters as the Attorney General directs and with such other matters as the senior member of the Court considers appropriate to include in the report.

Venue

19. (1) Sittings of the Court shall be held—

- (a) in a building or room approved for that purpose by the Attorney General; or
- (b) if, in the opinion of the Court in a particular case, it is expedient that a sitting of the Court be held in some other building or room, in that other building or room.

(2) If a room used or occupied by another court is approved under this section, sittings of the Court shall not be held in the room while the ordinary business of that other court is being transacted.

Change of venue

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

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

Contempt

21. (1) A person shall not commit contempt in the face of the Court.

Penalty: \$200 or imprisonment for 10 days.

(2) Proceedings for contempt shall be dealt with summarily before the Children's Court.

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(3) For the purpose of dealing with proceedings for contempt by a person in respect of whom the Children's Court would not, but for this subsection, have jurisdiction, the Children's Court—

- (a) shall have, and may exercise, the jurisdiction of a Local Court; and
- (b) shall not have, and may not exercise, the jurisdiction of the Children's Court,

as regards that person.

Judicial notice of signatures

22. Judicial notice shall be taken of the signatures of—

- (a) the senior member of the Court;
- (b) a member of the Court;
- (c) an authorised Magistrate; and
- (d) the Registrar of the Court,

where appearing on a document issuing out of the Court.

Rules

23. (1) The Governor may make rules, 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 practice and procedure of the Court; and
- (b) courses of training to be attended by members of the Court and persons proposed to be appointed as members of the Court.

(2) A provision of a rule may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

SCHEDULE 1

(Sec. 7)

PROVISIONS RELATING TO THE MEMBERS OF THE COURT

Magisterial status, etc., not affected

1. (1) A member of the Court does not cease to be a Magistrate, nor is the member's rank, title, status and precedence as a Magistrate affected, merely because of the member's appointment as a member of the Court.

(2) The service of a member of the Court in his or her capacity as such a member shall, for all purposes, be taken to be service as a Magistrate.

Term of office

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

Remuneration

3. A member of the Court is entitled to be paid—

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

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

4. The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Court and a member of the Court is not, as a member of the Court, subject to that Act.

Casual vacancies

5. A person shall be deemed to have vacated office as a member of the Court if the person—

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

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS OF THE COURT—*continued*

Appointment as Magistrate unaffected by resignation, etc.

6. A person does not cease to be a Magistrate merely because of—
- (a) his or her resignation from office as a member of the Court; or
 - (b) the expiration of his or her term of office as a member of the Court.