

FIRST PRINT

**MISCELLANEOUS ACTS (COMMUNITY WELFARE)
REPEAL AND AMENDMENT 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 repeal certain enactments and to amend certain other enactments, and to enact savings, transitional and other provisions, consequent upon the enactment of—

- (a) the proposed Community Welfare Act 1987;
 - (b) the proposed Children's Court Act 1987;
 - (c) the proposed Children (Care and Protection) Act 1987;
 - (d) the proposed Children (Criminal Proceedings) Act 1987;
 - (e) the proposed Children (Community Service Orders) Act 1987; and
 - (f) the proposed Children (Detention Centres) Act 1987,
- ("the proposed 1987 Community Welfare legislation").

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 repeals the Child Welfare Act 1939.

Clause 4 repeals the Community Welfare Act 1982.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

Clause 5 and Schedule 1 repeal various enactments that have amended the Child Welfare Act 1939 and certain other obsolete enactments.

Clause 6 and Schedule 2 repeal various enactments that have amended the Community Welfare Act 1982 and certain other obsolete enactments.

Clause 7 and Schedule 3 amend various Acts as a consequence of the enactment of the proposed 1987 Community Welfare legislation.

Clause 8 and Schedule 4 further amend various Acts as a consequence of the enactment of the proposed 1987 Community Welfare legislation.

Clause 9 and Schedule 5 enact savings, transitional and other provisions as a consequence of the enactment of the proposed 1987 Community Welfare legislation.

MISCELLANEOUS ACTS (COMMUNITY WELFARE) REPEAL AND AMENDMENT BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Repeal of Act No. 17, 1939
 4. Repeal of Act No. 76, 1982
 5. Repeals consequent upon the repeal of Act No. 17, 1939, and certain other repeals
 6. Repeals consequent upon the repeal of Act No. 76, 1982
 7. Amendments
 8. Further amendments
 9. Savings, transitional and other provisions
- SCHEDULE 1—REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND CERTAIN OTHER REPEALS
- SCHEDULE 2—REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 76, 1982
- SCHEDULE 3—AMENDMENTS
- SCHEDULE 4—FURTHER AMENDMENTS
- SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS
-

**MISCELLANEOUS ACTS (COMMUNITY WELFARE)
REPEAL AND AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to repeal certain enactments and to amend certain other enactments, and to enact savings, transitional and other provisions, consequent upon the enactment of the Community Welfare Act 1987, the Children's Court Act 1987, the Children (Care and Protection) Act 1987, the Children (Criminal Proceedings) Act 1987, the Children (Community Service Orders) Act 1987 and the Children (Detention Centres) Act 1987.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 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 Short title

1. This Act may be cited as the "Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987".

Commencement

2. (1) Subject to this section, this Act shall commence on the date of
10 assent to this Act.

(2) Section 3, in its application to a provision of the Child Welfare Act 1939, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(3) Section 7, in its application to a provision of Schedule 3, shall
15 commence on the day on which the provision commences.

(4) Section 8, in its application to a provision of Schedule 4, shall commence on the day on which the provision commences.

(5) Except as provided by subsection (6), the provisions of Schedule 3
20 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(6) Item (2) of the provisions of Schedule 3 relating to the Prisoners (Interstate Transfer) Act 1982 shall, if the day on which item (1) of those provisions commences is earlier than the day appointed and notified under section 2 (2) of the Prisoners (Interstate Transfer) Amendment Act 1986,
25 commence on the day so appointed and notified.

(7) Item (5) of the provisions of Schedule 4 relating to the Adoption of Children Act 1965 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the respective day or days on which sections 6E, 6K and 6R (as
30 to be inserted by the Adoption of Children (Amendment) Act 1980 and, in the case of sections 6E and 6R, as amended by the Adoption of Children (Amendment) Act 1982) of the Adoption of Children Act 1965 commence, as the case requires,

whichever is the later.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

(8) Item (1) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

(a) on the date of assent to this Act; or

5 (b) on the commencement of the Education and Public Instruction Act 1987,

whichever is the later.

(9) Item (2) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

(a) on the date of assent to this Act; or

10 (b) on the commencement of the Private Health Establishments Act 1982,

whichever is the later.

(10) Item (3)(a) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

15 (a) on the date of assent to this Act; or

(b) on the commencement of Division 1 of Part II of the Mental Health Act 1983,

whichever is the later.

20 (11) Item (3)(b) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

(a) on the date of assent to this Act; or

(b) on the commencement of Division 2 of Part II of the Mental Health Act 1983,

whichever is the later.

25 (12) Item (4) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

(a) on the date of assent to this Act; or

(b) on the commencement of the Interpretation Act 1987,

whichever is the later.

30 **Repeal of Act No. 17, 1939**

3. The Child Welfare Act 1939 is repealed.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

Repeal of Act No. 76, 1982

4. The Community Welfare Act 1982 is repealed.

Repeals consequent upon the repeal of Act No. 17, 1939, and certain other repeals

- 5 5. Each Act specified in Schedule 1 is, to the extent indicated in that Schedule, repealed.

Repeals consequent upon the repeal of Act No. 76, 1982

6. Each Act specified in Schedule 2 is, to the extent indicated in that Schedule, repealed.

10 **Amendments**

7. Each Act specified in Schedule 3 is amended in the manner set forth in that Schedule.

Further amendments

- 15 8. Each Act specified in Schedule 4 is amended in the manner set forth in that Schedule.

Savings, transitional and other provisions

9. Schedule 5 has effect.

SCHEDULE 1

(Sec. 5)

20 **REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND CERTAIN OTHER REPEALS**

- Statute Law Revision Act 1937 No. 35—so much of the Second Schedule as amends Act No. 51, 1916
 Government Relief Administration (Amendment) Act 1940 No. 33—the whole Act
 25 Child Welfare (Amendment) Act 1955 No. 14—the whole Act
 Child Welfare (Amendment) Act 1956 No. 9—the whole Act
 Deserted Wives and Children (Amendment) Act 1960 No. 21—section 1 (4) and (5) and sections 3, 4 and 7
 Child Welfare (Amendment) Act 1961 No. 15—the whole Act
 30 Child Welfare (Amendment) Act 1966 No. 11—the whole Act

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 1—*continued*

REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND
CERTAIN OTHER REPEALS—*continued*

- Child Welfare (Amendment) Act 1967 No. 27—the whole Act
- Child Welfare (Amendment) Act 1969 No. 27—the whole Act
- Metric Conversion Act 1974 No. 51—so much of the Schedule as amends Act No. 51,
5 1916
- Youth and Community Services (Amendment) Act 1976 No. 44—the whole Act
- Statute Law Revision Act 1976 No. 63—so much of Schedule 1 as amends Act No. 24,
1930
- Public Hospitals (Amendment) Act 1976 No. 95—so much of Schedule 5 as amends Act
10 No. 24, 1930
- Children (Equality of Status) Act 1976 No. 97—so much of Schedule 1 as amends Act
No. 17, 1939
- Notice of Action and Other Privileges Abolition Act 1977 No. 19—so much of Schedule
1 as amends Act No. 17, 1939
- 15 Child Welfare (Amendment) Act 1977 No. 20—the whole Act
- Maintenance (Amendment) Act 1977 No. 43—so much of section 3 as relates to
Schedules 3, 5 and 6, sections 5, 7 and 8 and Schedules 3, 5 and 6
- Child Welfare (Further Amendment) Act 1977 No. 100—the whole Act
- Child Welfare (Bail) Amendment Act 1978 No. 163—the whole Act
- 20 Youth and Community Services (Amendment) Act 1979 No. 130—the whole Act
- Child Welfare (Amendment) Act 1979 No. 131—the whole Act
- Child Welfare (Coroners) Amendment Act 1980 No. 28—the whole Act
- Child Welfare (Amendment) Act 1981 No. 43—the whole Act
- Miscellaneous Acts (Local Courts) Amendment Act 1982 No. 168—so much of Schedule
25 1 as amends Act No. 17, 1939
- Child Welfare (Probation and Parole) Amendment Act 1983 No. 195—the whole Act
- Child Welfare (Criminal Injuries Compensation) Amendment Act 1984 No. 72—the
whole Act
- Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16
30 as amends Act No. 71, 1979
- Miscellaneous Acts (Search Warrants) Amendment Act 1985 No. 38—so much of
Schedule 1 as amends Act No. 17, 1939
- Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985 No. 59—so much
of Schedule 1 as amends Act No. 17, 1939
- 35 Miscellaneous Acts (Annual Reports—Departments) Amendment Act 1985 No. 157—
so much of Schedule 1 as amends Act No. 17, 1939
- Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Act 1985 No. 227—so
much of Schedule 1 as amends Act No. 17, 1939
- Miscellaneous Acts (Area Health Services) Amendment Act 1986 No. 53—so much of
Schedule 1 as amends Act No. 17, 1939 and Act No. 90, 1973

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 2

(Sec. 6)

REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 76, 1982

- Adoption of Children (Community Welfare) Amendment Act 1982 No. 77—the whole Act
- 5 Bail (Community Welfare) Amendment Act 1982 No. 78—the whole Act
- Community Service Orders (Community Welfare) Amendment Act 1982 No. 79—the whole Act
- Coroners (Community Welfare) Amendment Act 1982 No. 80—the whole Act
- 10 Crimes (Community Welfare) Amendment Act 1982 No. 81—the whole Act
- Defamation (Community Welfare) Amendment Act 1982 No. 82—the whole Act
- Infants' Custody and Settlements (Community Welfare) Amendment Act 1982 No. 83—the whole Act
- Justices (Community Welfare) Amendment Act 1982 No. 84—the whole Act
- 15 Land and Environment Court (Community Welfare) Amendment Act 1982 No. 85—the whole Act
- Maintenance (Community Welfare) Amendment Act 1982 No. 86—the whole Act
- Mental Health (Community Welfare) Amendment Act 1982 No. 87—the whole Act
- Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1982 No. 88—the whole Act
- 20 Public Instruction (Community Welfare) Amendment Act 1982 No. 90—the whole Act
- Statutory and Other Offices Remuneration (Children's Panel Council) Amendment Act 1982 No. 91—the whole Act
- Community Welfare (Private Health Establishments) Amendment Act 1982 No. 132—the whole Act
- 25 Miscellaneous Acts (Local Courts) Amendment Act 1982 No. 168—so much of Schedule 2 as amends Act No. 76, 1982 and Act No. 78, 1982
- Community Welfare (Amendment) Act 1983 No. 2—the whole Act
- Miscellaneous Acts (Community Welfare) Amendment Act 1983 No. 3—the whole Act
- 30 Statutory and Other Offices Remuneration (Children's Boards of Review) Amendment Act 1983 No. 4—the whole Act
- Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1983 No. 181—so much of Schedule 1 as amends Act No. 87, 1982 and Act No. 3, 1983
- Crimes (Compensation) Amendment Act 1984 No. 70—section 4
- 35 Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 76, 1982 and Act No. 82, 1982
- Miscellaneous Acts (Search Warrants) Amendment Act 1985 No. 38—so much of Schedule 1 as amends Act No. 76, 1982
- Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985 No. 59—so much of Schedule 1 as amends Act No. 76, 1982
- 40 Community Welfare (Child Assault) Amendment Act 1985 No. 150—the whole Act
- Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Act 1985 No. 227—so much of Schedule 1 as amends Act No. 76, 1982
- Statute Law (Miscellaneous Provisions) Act 1985 No. 231—so much of Schedule 31 as amends Act No. 88, 1982
- 45

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3

(Sec. 7)

AMENDMENTS

Adoption of Children Act 1965 No. 23—

5 (1) Section 6, definition of "Foster parent" —

Omit the definition, insert instead:

"Foster parent" means any person—

- 10 (a) who has the care of a child in accordance with a fostering authority held by the person under the Children (Care and Protection) Act 1987;
- (b) who has the care of a child that has been placed in the care of the person by, or with the written approval of, the Minister administering the Children (Care and Protection) Act 1987 or the Director-General; or
- 15 (c) who has the care of a child that has been placed in the care of the person by an authorised private fostering agency within the meaning of the Children (Care and Protection) Act 1987.

(2) Section 18 (1) (b) (ii)—

Omit the subparagraph, insert instead:

- 20 (ii) had, as a ward within the meaning of the Child Welfare Act 1939 or the Children (Care and Protection) Act 1987, been in the care or custody of the applicant or applicants or with the applicant and a deceased spouse of the applicant.

(3) Section 24—

- 25 Omit "an order placing the child in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as a ward admitted to State control", insert instead "where the child has not attained the age of 18 years, an order declaring the child to be a ward under the Children (Care and Protection) Act 1987".

30 (4) Section 31A (2)—

Omit the subsection, insert instead:

- 35 (2) Where, in relation to a child referred to in section 26 (3) who is a ward within the meaning of the Children (Care and Protection) Act 1987, a consent to the adoption of the child is given by the mother of the child, the Director-General shall make the inquiries referred to in subsection (1) in order to ascertain whether any person, as at the date on which the consent is given, is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(5) (a) Section 34 (2) (a), (2D), (5) (d)—

Omit “Child Welfare Act, 1939” wherever occurring, insert instead “Children (Care and Protection) Act 1987”.

(b) Section 34 (4)—

5 Omit the subsection, insert instead:

(4) Without limiting the generality of subsection (3), an order under that subsection may, where the child has not attained the age of 18 years, declare the child to be a ward under the Children (Care and Protection) Act 1987, or order that the child remain under the guardianship of the Director-General for a further period of one year.

10 (6) Section 35 (1) (d)—

Omit “section 9 of the Child Welfare Act, 1939”, insert instead “section 90 of the Children (Care and Protection) Act 1987”.

(7) Section 43 (2)—

15 Omit “an order placing the child in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as a ward admitted to State control”, insert instead “, where the child has not attained the age of 18 years, an order declaring the child to be a ward under the Children (Care and Protection) Act 1987”.

20 **Bail Act 1978 No. 161—**

(1) (a) Section 4 (1), definition of “conviction” —

Omit “83 (3) of the Child Welfare Act, 1939”, insert instead “33 (1) (a) of the Children (Criminal Proceedings) Act 1987”.

(b) Section 4 (1), definition of “Local Court” —

25 Omit “a children’s court under the Child Welfare Act, 1939”, insert instead “the Children’s Court”.

(c) Section 4 (1), definition of “magistrate” —

Omit “a special magistrate under the Child Welfare Act, 1939”, insert instead “a member of the Children’s Court”.

30 (d) Section 4 (2) (d)—

Omit “and”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(e) Section 4 (2) (e), (f)—

At the end of section 4 (2) (e), insert:

; and

- 5 (f) a person who may appear or be brought before a court pursuant to section 21 (1) (d) or 26 (1) (c) of the Children (Community Service Orders) Act 1987.

(f) Section 4 (6)—

Omit the subsection, insert instead:

- 10 (6) A reference in this Act to a prison includes, in the case of a person who is under the age of 18 years, a reference to a detention centre within the meaning of the Children (Detention Centres) Act 1987.

(2) (a) Section 6 (g) (ii)—

Omit “and”.

(b) Section 6 (g1)–(g3)—

- 15 After section 6 (g), insert:

- (g1) the period during which an application for revocation, extension or amendment of a community service order (within the meaning of the Community Service Orders Act 1979) or a children’s community service order (within the meaning of the Children (Community Service Orders) Act 1987) is pending;
- 20 (g2) the period between a person’s being convicted of an offence under section 23 (1) of the Community Service Orders Act 1979 and the person’s appearing, pursuant to that Act, before the court that made the community service order, within the meaning of that Act, to which the person is subject;
- 25 (g3) the period between a person’s being found guilty of an offence under section 24 (1) of the Children (Community Service Orders) Act 1987 and the person’s appearing, pursuant to that Act, before the court that made the children’s community service order, within the meaning of that Act, to which the person is subject; and
- 30

(3) (a) Section 8 (1) (a)—

Omit “and”.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

- (b) Section 8 (1) (b), (c)—

At the end of section 8 (1) (b), insert:

; and

- (c) all offences (whether or not of a kind referred to in paragraph (a) or (b))
-
- in respect of which a person is an accused person by virtue of section 4
-
- (2) (e) or (f),

- (4) (a) Section 16 (d)—

Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the
Children (Criminal Proceedings) Act 1987”.

- (b) Section 16 (d)—

Omit “children’s court”, insert instead “Children’s Court”.

- (5) (a) Section 24 (5)—

Omit “a children’s court”, insert instead “the Children’s Court”.

- (b) Section 24 (5)—

Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the
Children (Criminal Proceedings) Act 1987”.

- (6) (a) Section 26 (1) (g)—

Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the
Children (Criminal Proceedings) Act 1987”.

- (b) Section 26 (1) (g)—

Omit “children’s court”, insert instead “Children’s Court”.

- (7) Section 32 (4), (5)—

After section 32 (3), insert:

(4) In having regard to the details of residence, as referred to in subsection
(1) (a) (i), of an accused person who is, under the age of 18 years, the fact that
the person does not reside with a parent or guardian of the person shall be
ignored.(5) The reference in subsection (1) (a) (i) to an accused person’s residence
includes a reference to the residential address at which the person may
generally be found.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(8) Section 58 (3A)—

After section 58 (3), insert:

- 5 (3A) This section does not apply in relation to an indemnity or an agreement to indemnify given by the Minister administering the Children (Care and Protection) Act 1987 to an officer of the Department of Youth and Community Services against any forfeiture which the officer may incur as a result of entering into any agreement under section 36 for the purpose of fulfilling a condition imposed on the grant of bail to a ward within the meaning of the Children (Care and Protection) Act 1987.

10 **Commonwealth Powers (Family Law—Children) Act 1986 No. 182—**

Schedule 1—

Omit “Child Welfare Act 1939”.

Community Service Orders Act 1979 No. 192—

Section 4 (1)—

- 15 Omit “Where a person of or over 18 years of age is before a court for sentencing after being convicted of an offence punishable by imprisonment, whether or not it is also punishable by a fine,” insert instead:

Where a person—

- 20 (a) who has committed an offence punishable by imprisonment (whether or not it is also punishable by a fine); and
- (b) who—
- (i) had attained the age of 18 years when the offence was committed; or
- 25 (ii) had not then attained that age but had attained the age of 21 years when the person was charged before a court with the offence,

is before a court for sentencing after being convicted of the offence,

Coroners Act 1980 No. 27—

(1) Section 13 (3) (h)—

- 30 Omit “an institution within the meaning of the Child Welfare Act, 1939”, insert instead “a residential child care centre licensed under the Children (Care and Protection) Act 1987 or a facility within the meaning of that Act or in a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
 AMENDMENTS—*continued*

(2) Section 13 (3) (h)—

Omit “or institution”, insert instead “, residential child care centre, facility or detention centre”.

Crimes Act 1900 No. 40—

5 (1) Section 19—

Omit “The provisions”, insert instead “Except in the case of murder committed by a person who is under the age of 18 years, the provisions”.

(2) Section 340 (2)—

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

(3) Section 353A (3)—

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

(4) Sections 353AA, 353AB—

15 After section 353A, insert:

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

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

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

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

(a) to the Children’s Court; or

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

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

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

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

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

Destruction of certain photographs, finger-prints, etc.

5 353AB. Where a court finds an offence alleged against a child who has had the child's photograph, finger-prints and palm-prints taken in accordance with section 353A (3) or 353AA not proved, the court shall cause to be served on—

(a) the child;

(b) where practicable, the parents or guardian of the child; and

(c) any other person who has the care of the child,

10 a notice stating that if the child or they so desires or desire, the court will order that the photograph, finger-prints and palm-prints, and all other records (other than the records of the court), relating to the alleged offence be destroyed and the court may make the order accordingly.

(5) Section 556A (1B)—

15 After section 556A (1A), insert:

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

(6) Section 558 (1A)—

20 After section 558 (1), insert:

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

Defamation Act 1974 No. 18—

25 Section 17H—

After section 17G, insert:

Matters arising under the Children (Care and Protection) Act 1987

30 17H. There is a defence of absolute privilege for the publication of a report made under section 100 (6) of the Children (Care and Protection) Act 1987 by a Board of Review established under that Act.

Fines and Forfeited Recognizances Act 1954 No. 25—

(1) Section 6 (1), (1A)—

Omit "or special magistrate" wherever occurring.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(2) Section 6 (2) (a)—

Omit “or a children’s court holden in either case before a Magistrate or special magistrate”, insert instead “constituted by a Magistrate or the Children’s Court”.

5 Infants’ Custody and Settlements Act 1899 No. 39—

(1) Section 10A (3)—

After “shall” where secondly occurring, insert “, subject to subsections (3A) and (3B),”.

(2) Section 10A (3A), (3B)—

10 After section 10A (3), insert:

(3A) Any order for the payment of a weekly or other periodical sum made by a Local Court in the exercise of the powers and authorities conferred by this Part shall have effect as an order for the payment, at the weekly or other periods stated in the order, of successive amounts of money equal to the sums specified in the order.

15

(3B) If default is made in the payment of any one or more of the weekly or other periodical sums referred to in subsection (3A), the order for the payment of that sum or the total of those sums then in default for any period not exceeding 6 months may be enforced as if the order were an order for the payment of a sum of money equal to that sum or the total of those sums made under the Local Courts (Civil Claims) Act 1970 by the Local Court which made the order.

20

(3) Section 10A (5)—

After section 10A (4), insert:

25

(5) The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to proceedings under this Act in a Local Court in the same way as they apply to criminal proceedings.

Judicial Officers Act 1986 No. 100—

(1) Section 3 (1), definition of “Magistrate”—

30

Omit “a special magistrate,”.

(2) Section 3 (1), definition of “Magistrate”—

After “industrial magistrate”, insert “, but does not include a member of the Children’s Court in his or her capacity as a member of that Court”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

Jury Act 1977 No. 18—

- (1) Schedule 1, clause 2 (b)—

Omit “an institution for juvenile offenders”, insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

- 5 (2) Schedule 2, clause 4—

Omit “special magistrates”, insert instead “members of the Children’s Court”.

Justices Act 1902 No. 27—

- (1) Section 84A—

Before section 85, insert:

10 **Traffic offences committed by children**

- 84A. (1) In this section—

15 “child”, in relation to a traffic offence, includes a person who was under the age of 18 years when the person committed the offence and was under the age of 21 years when the person was charged before a Justice or Justices with the offence;

“traffic offence” has the same meaning as it has in the Children (Criminal Proceedings) Act 1987.

20 (2) A Justice or Justices may, in respect of a child found guilty of a traffic offence, deal with the child in accordance with Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987.

(3) For the purpose of dealing with a person in accordance with Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987, a Justice or Justices shall have and may exercise the functions of the Children’s Court under that Division in the same way as if—

- 25 (a) the Justice or Justices were the Children’s Court; and
(b) the offence were an offence to which that Division applies.

(4) A Justice or Justices may not impose a sentence of imprisonment on a child found guilty of a traffic offence.

- (2) Section 104A (1), definition of “Magistrate” —

30 Omit “a special magistrate under the Child Welfare Act 1939”, insert instead “a member of the Children’s Court”.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

(3) Section 132A—

After section 132, insert:

Appeals where powers referred to in sec. 84A exercised

132A. (1) In this section—

5 “child”, in relation to a traffic offence, includes a person who was under the age of 18 years when the person committed the offence and was under the age of 21 years when the person was charged before a Justice or Justices with the offence;

10 “traffic offence” has the same meaning as it has in the Children (Criminal Proceedings) Act 1987.

15 (2) A proceeding by way of appeal or review in the Supreme Court or on appeal to the District Court may, in respect of any determination, conviction, finding of guilt or order made by a Justice or Justices in respect of a traffic offence committed by a child, be taken by the child concerned or, if the child concerned is under 18 years of age, on the child's behalf and in the child's name by a person responsible, within the meaning of the Children (Care and Protection) Act 1987, for the child or by the child's solicitor.

Land and Environment Court Act 1979 No. 204—

Section 64 (3)—

20 After section 64 (2), insert:

25 (3) Without affecting the generality of subsection (1), the Minister administering the Community Welfare Act 1987 may, at any stage of any proceedings before the Court in which an approved non-Government organisation within the meaning of that Act is a party, with the consent of that organisation, intervene by counsel, solicitor or agent and may examine witnesses and address the Court with respect to matters relevant to the proceedings.

Land Tax Management Act 1956 No. 26—

Section 10 (1) (g) (ii)—

30 Omit “a place licensed under Part VII of the Child Welfare Act, 1939, as amended by subsequent Acts.”, insert instead “a residential child care centre licensed under the Children (Care and Protection) Act 1987”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

Local Courts Act 1982 No. 164—

Section 14 (5)—

After section 14 (4), insert:

- 5 (5) The Chief Magistrate may not make such a requirement in respect of a Magistrate who is a member of the Children's Court except with the consent of the senior member of that Court.

Maintenance Act 1964 No. 74—

(1) Section 4 (7A)—

After section 4 (7), insert:

- 10 (7A) This section has effect subject to clause 25 of Schedule 5 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987.

(2) Section 5 (9A)—

After section 5 (9), insert:

- 15 (9A) This section has effect subject to clause 25 of Schedule 5 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987.

(3) (a) Section 7 (1), definition of "Court"—

Omit the definition, insert instead:

‘“Court” means a Local Court held before a Magistrate.

(b) Section 7 (1), definition of "Special magistrate"—

- 20 Omit the definition.

(4) Part II, Division 1, heading—

Omit "*Children's Courts*", insert instead "*Local Courts*".

(5) (a) Section 8A (1)—

Omit the subsection.

- 25 (b) Section 8A (2)—

- 30 Omit "subsection (1) (a), (b) or (c) has been made in respect of a child, or a child has been admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939, or the care of a child has been arranged under section 48G of that Act", insert instead "section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987 has been made in respect of a child, or a child is a ward within the meaning of that Act or a person subject to control within the meaning of the Children (Detention Centres) Act 1987,".

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

- (c) Section 8A (3), (4)—

Omit the subsections.

- (d) Section 8A (5)—

Omit the subsection, insert instead:

- (5) The Director-General may certify in writing that a specified child—

- (a) is, at the date of the certificate—

- (i) a child in respect of whom an order referred to in section 72 (1)
-
- (c) (ii) of the Children (Care and Protection) Act 1987 is in force;

- (ii) a ward within the meaning of that Act; or

- (iii) a person subject to control within the meaning of the Children
-
- (Detention Centres) Act 1987; and

- (b) was, during a specified period commencing not earlier than 3 months
-
- before the date of the certificate, such a child, ward or person,

and such a certificate purporting to be signed by the Director-General is,
without proof of the Director-General's office or signature, evidence of the
matters certified.

- (6) (a) Section 10 (3) (a)—

Omit the paragraph, insert instead:

- (a) in respect of a child in respect of whom a complaint or application for
-
- maintenance is made as referred to in section 8A; or

- (b) Section 10 (3) (b)—

Omit "Child Welfare Act, 1939, as amended by subsequent Acts", insert
instead "Children (Care and Protection) Act 1987".

- (c) Section 10 (3)—

Omit "such a ward", insert instead "such a child".

- (7) (a) Section 22 (5)—

Omit "under the Child Welfare Act, 1939, as amended by subsequent Acts",
insert instead "administering the Children (Care and Protection) Act 1987".

- (b) Section 22 (5)—

Omit ", as so amended,".

- (8) (a) Section 24 (1)—

Omit "a special magistrate", insert instead "a Magistrate".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(b) Section 24 (1)—

Omit “magistrate” where secondly and thirdly occurring, insert instead “Magistrate”.

(9) (a) Section 26 (c)—

5 After “8A” where firstly occurring, insert “(2)”.

(b) Section 26 (c)—

Omit:

ceases to be—

- 10 (i) a child subject to an order referred to in section 8A (1) (a), (b) or (c) or 8A (3);
- (ii) a child admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939; or
- (iii) a child whose care has been arranged under section 48G of that Act, as the case may be.

15 Insert instead:

ceases to be a child the subject of an order referred to in section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987, a ward within the meaning of that Act or a person subject to control within the meaning of the Children (Detention Centres) Act 1987.

20 (10) Section 35 (3A)—

Omit the subsection, insert instead:

(3A) Where an order (including a varied order) is in force under this Part for the maintenance of a child and the child becomes or is—

- 25 (a) a child in respect of whom an order referred to in section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987 is in force;
- (b) a ward within the meaning of that Act;
- (c) a person subject to control within the meaning of the Children (Detention Centres) Act 1987; or

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(d) a child in respect of whom financial assistance is being, or has been, given under the Children (Care and Protection) Act 1987 or any Act repealed by the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987,

5 the court may, on application by a person authorised for the purpose by the Director-General and upon notice being given to such persons and in such manner as the court directs, vary the order in so far as it relates to the receipt or disbursement of money payable under the order.

(11) (a) Section 38 (1)—

10 Omit “special magistrate”, insert instead “court”.

(b) Section 38 (2), (3)—

Omit “magistrate” wherever occurring, insert instead “court”.

(c) Section 38 (2)—

Omit “he thinks”, insert instead “it thinks”.

15 (12) Section 66 (1), definition of “New South Wales order” —

Omit “special magistrate”, insert instead “Magistrate”.

(13) (a) Section 83 (4)—

Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.

20 (b) Section 83 (5)—

Omit “court”, insert instead “prescribed court”.

(14) (a) Section 86 (1)—

Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.

25 (b) Section 86 (2)—

Omit “court”, insert instead “prescribed court”.

(15) (a) Section 88 (1)—

Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.

30 (b) Section 88 (1)—

Omit “in the court”, insert instead “in the prescribed court”.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

(16) (a) Section 90 (1), (2)—

Omit "Metropolitan Children's Court at Sydney" wherever occurring, insert instead "prescribed court".

(b) Section 90 (5)—

5 Omit "The court", insert instead "The prescribed court".

(17) Section 93 (1)—

Omit "the court", insert instead "the prescribed court".

(18) Section 105A—

After section 105, insert:

10 **Exclusion of persons from hearing of complaints**

105A. During the hearing of any complaint under this Act, no person shall be or be permitted to be present in court except any one or more of the following:

- 15 (a) the adjudicating Magistrate, any officer within the meaning of the Children (Care and Protection) Act 1987, the officers of the court, and a member of the police force;
- (b) the complainant and the defendant, and their respective barristers and solicitors;
- 20 (c) the mother, sister or other relative or friend of the complainant, if desired by the complainant;
- (d) any person while being examined as a witness;
- (e) the mother, sister or female friend of any female witness, if desired by the witness while being examined;
- (f) any other person permitted by the court to be present.

25 (19) Section 108A—

After section 108, insert:

Publicity

30 108A. The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to the hearing of a complaint or application under this Act in the same way as they apply to criminal proceedings.

(20) Section 109 (a1)—

Omit "(1) or".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(21) Section 113 (7)—

Omit the subsection, insert instead:

- 5 (7) The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to the hearing of an appeal under this section in the same way as they apply to criminal proceedings.

(22) Section 117A—

Omit “special magistrate”, insert instead “Magistrate”.

Pre-Trial Diversion of Offenders Act 1985 No. 153—

Section 4 (1) (b)—

- 10 Omit “a Justice exercising the jurisdiction of a children’s court”, insert instead “the Children’s Court”.

Prisoners (Interstate Transfer) Act 1982 No. 104—

(1) Section 5 (1), definition of “sentence of imprisonment” —

- 15 Omit “an institution within the meaning of the Child Welfare Act, 1939,” insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

(2) Section 5 (1), definition of “State sentence of imprisonment”—

- 20 Omit “an institution within the meaning of the Child Welfare Act 1939”, insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Prisons Act 1952 No. 9—

Section 4 (1), definition of “prison” —

After “a prison”, insert “, but does not include a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

25 **Probation and Parole Act 1983 No. 194—**

(1) (a) Section 4 (1), definition of “prison” —

After “1952”, insert “, and includes a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

(b) Section 4 (1), definition of “prisoner” —

- 30 Omit the definition, insert instead:

“prisoner” means—

- (a) a prisoner within the meaning of the Prisons Act 1952; or

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

- (b) a person subject to control within the meaning of the Children (Detention Centres) Act 1987 by virtue of—
- (i) an order in force under section 10 of that Act whereby the person has been transferred from a prison to a detention centre; or
 - (ii) an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that the whole or any part of a term of imprisonment imposed on the person be served in a detention centre;
- (c) Section 4 (1), definition of “term of imprisonment” —
- (i) At the end of paragraph (d), insert “or”.
 - (ii) From paragraph (e), omit “or”.
 - (iii) Omit paragraph (f).
- (d) Section 4 (1A)—
- After section 4 (1), insert:
- (1A) In this Act, a reference to the governor of a prison includes, in relation to a detention centre within the meaning of the Children (Detention Centres) Act 1987, a reference to the superintendent of a detention centre.
- (2) (a) Section 47 (3)—
- Omit “the Director, as defined in section 4 (1) of that Act”, insert instead “or was formerly a person subject to control, within the meaning of the Children (Detention Centres) Act 1987, the Director-General”.
- (b) Section 47 (3)—
- After “institution” where lastly occurring, insert “or while a person subject to control, as the case may be”.
- (c) Section 47 (6)—
- After section 47 (5), insert:
- (6) In this section—
- (a) a reference to the Commission, in relation to a prisoner or person referred to in subsection (3), is a reference to the Director-General; and
 - (b) a reference to the Director-General is a reference to the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

(3) Section 53—

Omit the section.

(4) Schedule 3, clause 6—

Omit the clause.

5 (5) Schedule 4—

Omit the Schedule.

Public Instruction (Amendment) Act 1916 No. 51—

(1) Section 2 (1), definition of “The Court” —

Omit the definition, insert instead:

10 “The Court” means a Local Court held before a Magistrate.

(2) Sections 3A, 8, 9—

Omit the sections.

Public Works Act 1912 No. 45—

Section 34 (6) (a)—

15 Omit “, or an institution constituted under Part X of the Child Welfare Act, 1939, as amended by subsequent Acts”, insert instead “or a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Registration of Births, Deaths and Marriages Act 1973 No. 87—

Section 4 (1), definition of “institution” —

20 Omit paragraph (e), insert instead:

(e) a residential child care centre licensed under the Children (Care and Protection) Act 1987 or a facility within the meaning of that Act or a detention centre within the meaning of the Children (Detention Centres) Act 1987;

25 Search Warrants Act 1985 No. 37—

Section 10, definition of “search warrant” —

Omit:

section 145 of the Child Welfare Act 1939;

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

section 295 of the Community Welfare Act 1982;

Insert instead, in alphabetical order of Acts:

sections 24, 61, 94 and 116 of the Children (Care and Protection) Act 1987;

Stamp Duties Act 1920 No. 47—

- 5 Second Schedule, paragraph (e) of the *Exemptions* under the heading “LETTER OR POWER OF ATTORNEY” —

Omit “Children’s Court”, insert instead “the Children’s Court”.

Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)—

(1) Schedule 2, Part 1—

- 10 Omit:

Magistrate (under the Local Courts Act, 1982), other than the Chief Magistrate, a Deputy Chief Magistrate or a Magistrate who has limited tenure or is the holder of a prescribed office, within the meaning of that Act.

- 15 Insert instead:

Magistrate (under the Local Courts Act 1982) other than—

- (a) the Chief Magistrate;
- (b) a Deputy Chief Magistrate;
- (c) the senior member of the Children’s Court;
- 20 (d) a member of the Children’s Court;
- (e) a Magistrate who has limited tenure; or
- (f) a Magistrate who is the holder of a prescribed office, within the meaning of the Local Courts Act 1982.

Senior member of the Children’s Court.

- 25 Member of the Children’s Court.

(2) Schedule 2, Part 1—

At the end of the Part, insert:

Full-time President of the Children’s Review Panel.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

Supreme Court Act 1970 No. 52—

Third Schedule, paragraph (f)—

Omit “Part XIV of the Child Welfare Act, 1939”, insert instead “Part 2 of the Children (Criminal Proceedings) Act 1987”.

5 Youth and Community Services Act 1973 No. 90—

(1) Section 3, definition of “relative” —

Omit paragraph (c), insert instead:

(c) a person in whose care or custody the person has been placed in accordance with the provisions of the Adoption of Children Act 1965;

10 (2) Section 27 (b)—

Omit “a neglected child within the meaning of Part XIV of the Child Welfare Act, 1939, and may be dealt with in accordance with the provisions of that Part”, insert instead “a child in need of care within the meaning of the Children (Care and Protection) Act 1987 and may be dealt with in accordance with Part 5 of that Act”.

15

SCHEDULE 4

(Sec. 8)

FURTHER AMENDMENTS

Adoption of Children Act 1965 No. 23—

20 (1) Long title—

Omit “the Child Welfare Act, 1939,”.

(2) Sections 3, 4—

Omit the sections.

(3) Section 5 (1)—

25 Omit “provisions of section 4”, insert instead “repeal of the former Acts”.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

- (4) (a) Section 6, definition of “Director-General” —

Omit the definition of “Director”, insert instead:

5 “Director-General” means the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.

- (b) Section 6, definition of “Principal officer” —

Omit “Director”, insert instead “Director-General”.

- (c) Section 6, definition of “the former Acts” —

Omit the definition, insert instead:

10 “the former Acts” means all or any of the enactments of the Child Welfare Act 1939, or of any Act amending that Act.

- (5) Sections 6E, 6K, 6R—

Omit “Director” wherever occurring, insert instead “Director-General”.

- 15 (6) Sections 10, 11, 12, 13, 14, 15, 18, 21, 25, 28, 31A, 31B, 32, 34, 41, 49A, 50, 51 52, 68A, 68B—

Omit “Director” wherever occurring, insert instead “Director-General”.

- (7) Sections 28 (3), 34 (4A) (e)—

Omit “Director’s” wherever occurring, insert instead “Director-General’s”.

- (8) Section 69—

- 20 Omit the section.

Child Welfare Act 1939 No. 17—

Sections 81AA, 81AB—

After section 81, insert:

Right of appearance

- 25 81AA. (1) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person—

(a) the child or young person and each person responsible for the child or young person; and

(b) the Director-General,

- 30 may appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

(2) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, any other person who, in the opinion of the court, has a genuine concern for the welfare of the child or young person to whom the proceedings relate may, by leave of the court, appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

(3) In this section—

“person responsible”, in relation to a child or young person, means—

(a) a parent of the child or young person;

(b) a person (other than the Minister or the Director-General) who has the care of the child or young person; or

(c) in the case of a child or young person who is in the care of the Minister or the Director-General—a person who had the care of the child or young person immediately before the child or young person came to be in the care of the Minister or the Director-General, as the case may be.

Court's powers with respect to representation for children

81AB. (1) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, the court may appoint a person to act as guardian ad litem for the child or young person.

(2) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, the court may, if it appears to it that the child or young person ought to be separately represented—

(a) order that the child or young person be separately represented; and

(b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child or young person.

(3) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the court has made an order under subsection (2) (b).

30 Children (Care and Protection) Act 1987—

(1) Section 3 (1), paragraph (a) (i) of the definition of “exempt premises” —

Omit the subparagraph, insert instead:

(i) a State school or a registered school within the meaning of the Education and Public Instruction Act 1987;

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

- (2) Section 3 (1), paragraph (a) (ii) of the definition of “exempt premises”—

Omit the subparagraph, insert instead:

- (ii) a private hospital or nursing home licensed under the Private Health Establishments Act 1982;

- 5 (3) Section 3 (1), paragraph (a) (iii) of the definition of “exempt premises”—

- (a) Omit “an admission centre or a mental hospital within the meaning of the Mental Health Act 1958”, insert instead “a hospital within the meaning of the Mental Health Act 1983”.

- 10 (b) Omit “an authorised hospital within the meaning of the Mental Health Act 1958”, insert instead “an authorised hospital within the meaning of the Mental Health Act 1983”.

- (4) Schedule 4, clause 21 (4)–(8)—

Omit the subclauses, insert instead:

- 15 (4) Part 6 of the Interpretation Act 1987 applies to a rule made under this clause in the same way as it applies to a statutory rule within the meaning of that Act.

Children (Equality of Status) Act 1976 No. 97—

- (1) (a) Section 12 (2), (3)—

Omit the subsections.

- 20 (b) Section 12 (4)—

Omit “or (2)”.

- (c) Section 12 (5) (a)—

Omit “or (2) (a)”.

- (d) Section 12 (7) (a)—

- 25 Omit “1964; or”, insert instead “1964,”.

- (e) Section 12 (7) (b)—

Omit the paragraph.

- (f) Section 12 (7)—

Omit “or discharge, as the case may be,”.

- 30 (2) (a) Section 14 (2), (3)—

Omit the subsections.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

(b) Section 14 (4)—

Omit “or (2)”.

(c) Section 14 (5) (a)—

Omit “or (2) (a)”.

5 (d) Section 14 (7)—

Omit “or (2)”.

Commonwealth Powers (Family Law—Children) Act 1986 No. 182—

Schedule 1—

10 Omit “Community Welfare Act 1982”, insert instead “Children (Care and Protection) Act 1987”.

Evidence Act 1898 No. 11—

(1) Section 43A (a)—

At the end of section 43A (a), insert “or”.

(2) Section 43A (c)—

15 Omit the paragraph.

Finances Adjustment Act 1932 No. 27—

(1) Long title—

Omit “the Government Relief Administration Act, 1930,”.

(2) Section 2—

20 Omit the section.

(3) Part VI—

Omit the Part.

Maintenance Act 1964 No. 74—

(1) Long title—

25 Omit “the Child Welfare Act, 1939–1961,”.

(2) Section 1 (4)—

Omit the subsection.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*
 FURTHER AMENDMENTS—*continued*

- (3) Section 7 (1), definition of "Director-General" —
 After the definition of "Court", insert:
 "Director-General" means the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.
- 5 (4) Section 8A (2)—
 Omit "permanent head of the Department of the Government administering that Act", insert instead "Director-General".
- 10 (5) (a) Section 28A (1) (a)—
 Omit "permanent head of the Department of the Government administering the Child Welfare Act, 1939," insert instead "Director-General".
- (b) Section 28A (1) (b), (c)—
 Omit "that permanent head" wherever occurring, insert instead "the Director-General".
- 15 (6) (a) Section 66 (1), definition of "Certified copy" —
 From paragraph (a), omit "permanent head", insert instead "Director-General".
- (b) Section 66 (1), definition of "Permanent head" —
 Omit the definition.
- 20 (7) Section 69A (1), (4), (5)—
 Omit "permanent head" wherever occurring, insert instead "Director-General".
- (8) Section 80 (1)—
 Omit "permanent head" wherever occurring, insert instead "Director-General".
- (9) Section 81 (5)—
 Omit "permanent head", insert instead "Director-General".
- 25 (10) Section 82—
 Omit "permanent head", insert instead "Director-General".
- (11) Section 83 (1)–(4)—
 Omit "permanent head" wherever occurring, insert instead "Director-General".
- 30 (12) Section 84 (1), (2)—
 Omit "permanent head" wherever occurring, insert instead "Director-General".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

(13) Section 87—

Omit “permanent head” wherever occurring, insert instead “Director-General”.

(14) Section 109A—

5 Omit “permanent head” wherever occurring, instead “Department Head”.

(15) Schedule Two—

Omit so much as amends Act No. 17, 1939.

(16) Schedule Three—

Omit so much as relates to Act No. 17, 1939.

10 **Mental Health Act 1983 No. 178—**

(1) Section 4 (1), definition of “intellectually handicapped person under guardianship”—

Omit the definition, insert instead:

15 “intellectually handicapped person under guardianship” means a person who is being dealt with as an intellectually handicapped person under the provisions of Part IX of the Child Welfare Act 1939;

(2) Section 86 (2) (e)—

Omit the paragraph, insert instead:

20 (e) where the person is an intellectually handicapped person under guardianship of the Minister for Youth and Community Services, that Minister.

(3) Section 108 (2) (c)—

Omit the paragraph, insert instead:

25 (c) where the patient is an intellectually handicapped person under guardianship of the Minister for Youth and Community Services, that Minister consents to the application.

Miscellaneous Acts (Administrative Changes) Amendment Act 1975 No. 65—

(1) (a) Section 2 (1)—

Omit “, 8”.

30 (b) Section 2 (2)—

Omit “, 7, 12”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

(2) Section 8—

Omit the section.

Private Health Establishments Act 1982 No. 130—

(1) Long title—

- 5 Omit “, nursing homes and certain residential centres for handicapped persons”, insert instead “and nursing homes”.

(2) Section 3—

Omit the section.

(3) (a) Section 4 (1), definition of “establishment” —

- 10 Omit “, nursing home or residential centre for handicapped persons”, insert instead “or nursing home”.

(b) Section 4 (1), definition of “residential centre for handicapped persons” —

Omit the definition.

(4) Part II, heading—

- 15 Omit “, NURSING HOMES AND CERTAIN RESIDENTIAL CENTRES FOR HANDICAPPED PERSONS”, insert instead “AND NURSING HOMES”.

(5) Section 6 (3)—

Omit the subsection.

20 (6) Section 24—

Omit the section.

(7) Section 28 (1)—

Omit the subsection.

(8) Section 30 (1)—

- 25 Omit the subsection.

(9) Section 31—

Omit “or residential centre for handicapped persons”.

(10) Section 32 (1)—

Omit the subsection.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

- (11) Section 35, definition of “establishment” —

Omit the definition.

- (12) Schedule 3, clause 6—

Omit the clause.

5 Prostitution Act 1979 No. 71—

Section 5 (2)—

Omit “not being a child within the meaning of the Community Welfare Act, 1982,” insert instead “who is of or above the age of 18 years and”.

Protected Estates Act 1983 No. 179—

- 10 Section 34 (2)—

Omit the subsection.

Public Finance and Audit Act 1983 No. 152—

Schedule 2—

Insert, in appropriate alphabetical order:

- 15 Home Care Service of New South Wales.

Registration of Births, Deaths and Marriages Act 1973 No. 87—

Sections 15 (c) (ii), (e), 46 (1) (a), (2)—

Omit “permanent head” wherever occurring, insert instead “Department Head”.

20 Youth and Community Services Act 1973 No. 90—

- (1) Section 2A—

Omit the section.

- (2) Section 3, definition of “Director-General” —

Omit the definition of “Director”, insert instead:

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

- (3) Section 3A (4) (a)—

Omit “Director”, insert instead “Director-General”.

- (4) Part II—

- 30 Omit the Part.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

(5) Sections 18, 19, 24, 26, 31, 34—

Omit “Director” wherever occurring, insert instead “Director-General”.

(6) Sections 19 (6) (b), 24 (5)—

Omit “Director’s” wherever occurring, insert instead “Director-General’s”.

5 (7) Section 33—

Omit the section.

SCHEDULE 5

(Sec. 9)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

10

PART I

PRELIMINARY

Interpretation

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

15 “the 1987 Community Welfare legislation” means this Act and the following Acts:

Community Welfare Act 1987;

Children’s Court Act 1987;

Children (Care and Protection) Act 1987;

Children (Criminal Proceedings) Act 1987;

20 Children (Community Service Orders) Act 1987;

Children (Detention Centres) Act 1987.

(2) Except in so far as the context or subject-matter otherwise indicates or requires, an expression used in a provision of this Schedule has the same meaning as it has in the relevant provisions of the 1987 Community Welfare legislation relating to the subject-matter of that provision.

25

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Savings relating to repealed enactments

2. The repeal by this Act of any enactment does not affect—

- (a) the proof of any past act or thing;
- (b) any duty, obligation, liability, benefit, privilege or right saved by the operation of the enactment; or
- (c) any amendment or validation made by the enactment.

Interpretation Act 1897

3. The savings contained in this Schedule do not limit any saving in the Interpretation Act 1897.

10

PART 2

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—CHILD WELFARE ACT 1939

Pending proceedings in courts with respect to children and young persons

15 4. (1) Any proceedings with respect to a child or young person within the meaning of the Child Welfare Act 1939 (whether or not under that Act) that were pending in a court immediately before the appointed day may be continued and completed, and any order may be made in those proceedings and shall, subject to this Part, be given effect to, as if the 1987 Community Welfare legislation had not been enacted.

20 (2) The provisions of this Part apply to and in respect of any order made or any thing done by a court in any proceedings referred to in subclause (1) as if the order had been made or the thing done immediately before the appointed day.

(3) In this clause, “the appointed day” means the day appointed and notified under—

- (a) section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 5 of that Act;
- 25 (b) section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 2 of that Act; or
- (c) section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 3 of that Act,

whichever is appropriate to the proceedings referred to in subclause (1).

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Boarded-out wards or adopted boarders**

5. (1) A ward under the Child Welfare Act 1939 who, immediately before the appointed day, was a person boarded-out under section 23 (1) of that Act or was an adopted boarder under that Act shall, on and from that day, be deemed—

- 5 (a) to have been placed, under section 91 (1) (d) of the Children (Care and Protection) Act 1987, in the custody of a person approved by the Minister, being the person with whom the ward, immediately before that day, was a person so boarded-out or with whom the adopted boarder, immediately before that day, remained by the authority of the Minister, as the case may be; and
- 10 (b) to have been so placed on the same conditions as those which applied in respect of the ward immediately before the appointed day.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

15 Wards

6. (1) A person who, immediately before the appointed day—

- (a) was a ward under the Child Welfare Act 1939 otherwise than by reason of having been committed to an institution under that Act; or
- (b) was, under that Act, a person—

- 20 (i) committed to the care of the Minister to be dealt with as a ward admitted to State control; and
- (ii) not absolutely discharged from the supervision and control of the Minister,
- shall be deemed to be a ward within the meaning of the Children (Care and Protection) Act 1987.

25 (2) Where—

(a) before the appointed day a person became a ward under section 139A of the Child Welfare Act 1939; and

(b) the person was a ward immediately before that day,

- 30 then, if at the expiration of the period applicable to the person under section 139A (2) of the Child Welfare Act 1939 the person is a ward, the person shall, notwithstanding any other provision of the Children (Care and Protection) Act 1987, cease to be a ward upon the expiration of that period.

(3) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

35

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Licences to control child care centres**

7. (1) Subject to subclause (2), where a licence authorising a person to control a child care centre on any premises, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

5 (a) the licence shall be deemed—

(i) to be a licence for a child care service, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

(ii) subject to that Act, to be in force for a period of 2 years from the appointed day;

10 (b) the licence referred to in paragraph (a) (i) shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day; and

15 (c) the person authorised by a licence, granted under section 29 of the Child Welfare Act 1939, to conduct a child care centre on those premises shall be deemed to be the authorised supervisor under the licence referred to in paragraph (a) (i).

20 (2) Where a licence, being a licence of the kind firstmentioned in subclause (1), was granted to a person as referred to in that subclause and authorised the person to control a child care centre, being a child care centre conducted in the home of another person for not more than 4 children under the age of 6 years (including any children under the age of 6 years of that other person)—

(a) the licence shall be deemed to have been granted—

25 (i) except as provided by subparagraph (ii), to the employer of the person to whom it was granted; or

(ii) where the person to whom it was granted controls the child care centre otherwise than as an employee, to such person as the Director-General determines; and

30 (b) the person to whom the licence was granted shall be deemed to be the authorised supervisor under the licence referred to in subclause (1) (a) (i).

(3) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 1 of Part 3 of that Act.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Permits to control child care centres**

8. (1) Where a permit authorising a person to control a child care centre on any premises, granted under section 32 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

- 5 (a) the permit shall be deemed—
 - (i) to be a licence for a child care service, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and
 - (ii) subject to that Act, to be in force until the expiration of the period for which the permit was granted;
- 10 (b) the licence shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the permit was subject immediately before the appointed day; and
- 15 (c) the person authorised by a permit, granted under section 32 of the Child Welfare Act 1939, to conduct a child care centre on those premises shall be deemed to be the authorised supervisor under the licence.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 1 of Part 3 of that Act.

20 Licences to control children’s depots, homes or hostels

9. (1) Where a licence authorising a person to control a children’s depot, home or hostel on any premises, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

- (a) the licence shall be deemed—
 - 25 (i) to be a licence for a residential child care centre, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and
 - (ii) subject to that Act, to be in force for a period of 3 years from the appointed day;
- 30 (b) the licence referred to in paragraph (a) (i) shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day; and
- 35 (c) the person authorised by a licence, granted under section 29 of the Child Welfare Act 1939, to conduct a children’s depot, home or hostel on those premises shall be deemed to be the licensed manager under the licence referred to in paragraph (a) (i).

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 2 of Part 3 of that Act.

Permits to control children’s depots, homes or hostels

5 10. (1) Where a permit authorising a person to control a children’s depot, home or hostel on any premises, granted under section 32 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

(a) the permit shall be deemed—

10 (i) to be a licence for a residential child care centre, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

(ii) subject to that Act, to be in force until the expiration of the period for which the permit was granted;

15 (b) the licence shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the permit was subject immediately before the appointed day; and

(c) the person authorised by a permit, granted under section 32 of the Child Welfare Act 1939, to conduct a children’s depot, home or hostel on those premises shall be deemed to be the licensed manager under the licence.

20 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 2 of Part 3 of that Act.

Licences to conduct and control private foster homes for children

25 11. (1) Where a licence authorising a person to conduct and control a private foster home, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

(a) the licence shall be deemed to be a fostering authority, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

30 (b) the fostering authority shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence was subject immediately before the appointed day.

35 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 4 of Part 3 of that Act.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Orders of discharge of persons in institutions**

12. (1) An order of discharge made under section 54 (4) of the Child Welfare Act 1939 and in force immediately before the appointed day shall, on and from that day, be deemed to be a parole order made by the Parole Board under section 27 (2) of the
5 Probation and Parole Act 1983.

(2) Subject to the Probation and Parole Act 1983, a parole order referred to in subclause (1) shall—

(a) remain in force for the period; and

(b) be subject to the conditions,

10 specified in the discharge order deemed, by that subclause, to be the parole order.

(3) For the purposes of the Probation and Parole Act 1983, discharge from an institution under section 54 (4) of the Child Welfare Act 1939 shall be deemed to be release, on parole, from a prison.

(4) In this clause, “the appointed day” means the day appointed and notified under
15 section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Punishment for misbehaving in institutions

13. (1) Where any punishment was imposed on a person under section 56 (3) or 57 (2) (a) or (b) of the Child Welfare Act 1939 before the appointed day but had not been
20 completely served before that day, that person is liable to serve, for the unexpired period of the punishment, such of the punishments specified in section 21 (1) of the Children (Detention Centres) Act 1987 as is determined by the superintendent of the detention centre in which that person is for the time being detained in accordance with directions given to the superintendent by the Director-General.

25 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Licences to take part in public entertainments

14. (1) Where a licence authorising a child to be employed in any place or premises mentioned in section 68 (1) (a) of the Child Welfare Act 1939, granted under section 69
30 of that Act, was in force immediately before the appointed day, the licence shall, on and from that day, be deemed—

(a) to be a children’s employment licence, within the meaning of the Children (Care and Protection) Act 1987, granted in respect of that child;

35 (b) subject to that Act, to be in force until the expiration of the period for which the licence firstmentioned in this subclause was granted; and

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (c) to be subject to the same conditions, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day.

5 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 4 of that Act.

Powers exercised by the court under section 82 of the Child Welfare Act 1939

15. (1) Where a person was, immediately before the appointed day—

- 10 (a) a person subject to probation by virtue of section 82 (1) (b) of the Child Welfare Act 1939 or a person committed to an institution by virtue of section 82 (1) (e) of that Act, the person shall, on and from that day, be deemed, subject to the Children (Care and Protection) Act 1987, to have been placed, by virtue of an order made under section 72 (1) (c) (i) of the Children (Care and Protection) Act 1987, under the supervision of an officer for the period expiring—

(i) upon the expiry of the period for which the person was released on probation under section 82 (1) (b) of the Child Welfare Act 1939;

(ii) upon the expiry of 2 years from when the order was made; or

(iii) upon the person's attaining the age of 18 years,

whichever first occurs;

- 20 a person committed to the care of another person under section 82 (1) (c) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed to be a person placed, under section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987, in the custody of that other person for the period expiring—

(i) upon the expiry of the period specified by the court making the committal;

- 25 (ii) upon the expiry of 2 years from when the person was so committed; or

(iii) upon the person's attaining the age of 18 years,

whichever first occurs, and that other person shall, for the purposes of Part 5 of the Children (Care and Protection) Act 1987, be deemed to have given undertakings to observe the conditions to which that other person was, immediately before the appointed day, subject by virtue of section 82 (1) (c) of the Child Welfare Act 1939; or

- 30 (c) a person in the care of the Minister by virtue of section 82 (1) (d) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Care and Protection) Act 1987, to be a ward by virtue of an order made under section 72 (1) (c) (iii) of the Children (Care and Protection) Act 1987 for the period expiring—

35

(i) upon the expiry of 2 years from when the order was made; or

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(ii) upon the person's attaining the age of 18 years,

whichever first occurs.

(2) Where a person has, under section 82 (2) of the Child Welfare Act 1939, undertaken, before the appointed day, to observe any conditions in relation to a child,
5 that undertaking shall, on and from that day, be deemed—

(a) where the undertaking has not expired, to be, on and from that day, an undertaking accepted under section 72 (1) (b) (i) of the Children (Care and Protection) Act 1987;

10 (b) where it was given otherwise than by a person responsible for the child, to have been given by a person responsible for the child; and

(c) to be in force for the period expiring upon the expiry of the period determined, under section 82 (2) of the Child Welfare Act 1939, by the court when releasing the child under that subsection.

15 (3) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 5 of that Act.

Powers exercised by the court under section 83 of the Child Welfare Act 1939

16. (1) Where, immediately before the appointed day—

20 (a) a person was subject to probation by virtue of section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Criminal Proceedings) Act 1987, to be subject, by virtue of section 33 (1) (e) of the Children (Criminal Proceedings) Act 1987, to probation on the same conditions, if any, as those imposed by or under section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939 and for the period expiring—

25 (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the period for which the person was released on probation under section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939;

30 (ii) where the period for which the person was so released exceeds 12 months and, on the appointed day, less than 12 months have elapsed—upon the expiry of 12 months from the date of the release; or

(iii) where the period for which the person was so released exceeds 12 months and, on the appointed day, 12 months or more have elapsed—upon the appointed day;

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- 5 (b) a person was a person committed to the care of another person under section 83 (1) (b) or (2) (b) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Criminal Proceedings) Act 1987, to be subject, by virtue of section 33 (1) (e) of the Children (Criminal Proceedings) Act 1987, to probation on the same conditions, if any, as those imposed under section 83 (1) (b) or (2) (b) of the Child Welfare Act 1939, upon the person's being so committed, and, in addition, on the condition that the person reside with the person into whose care the person was so committed, and to be so subject for the period expiring—
- 10 (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the period for which the person was so committed;
- (ii) where the period for which the person was so committed exceeds 12 months and, on the appointed day, less than 12 months have elapsed—upon the expiry of 12 months from the date of the committal; or
- 15 (iii) where the period for which the person was so committed exceeds 12 months and, on the appointed day, 12 months or more have elapsed—upon the appointed day;
- 20 (c) a person was a person committed to an institution under section 83 (1) (c) or (2) (d) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed to be a person subject to control pursuant to an order made under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 expiring—
- (i) except as provided by subparagraph (ii), (iii), (iv) or (v)—upon the expiry of the term specified by the court making the committal;
- 25 (ii) where that term exceeds 2 years and the person committed has, on the appointed day, served less than 2 years of that term—upon the expiry of 2 years from the date of the committal;
- (iii) where that term exceeds 2 years and the person committed has, on the appointed day, served 2 or more years of that term—upon the appointed day;
- 30 (iv) where the person was committed generally and has, on the appointed day, served less than 1 year—upon the expiry of 1 year from the date of the committal; or
- (v) where the person was committed generally and has, on the appointed day, served 1 year or more—upon the appointed day; and

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (d) any recognizance entered into pursuant to section 83 (2) (e) or (3) (c) of the Child Welfare Act 1939 was in force, it shall, on and from that day, be deemed to be a recognizance entered into pursuant to section 33 (1) (b) of the Children (Criminal Proceedings) Act 1987 expiring—
- 5 (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the term specified by the court which required the recognizance to be entered into;
- (ii) where that term exceeds 12 months and the recognizance has enured for less than 12 months of that term—upon the expiry of 12 months from the date the recognizance was entered into; or
- 10 (iii) where that term exceeds 12 months and the recognizance has, on the appointed day, enured for 12 months or more of that term—upon the appointed day.

- (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the
- 15 commencement of Part 3 of that Act.

Directions under section 87 (1A) of the Child Welfare Act 1939

17. (1) A direction given under section 87 (1A) of the Child Welfare Act 1939 in force on the appointed day that a person be detained in a shelter shall, on and from that day, be deemed, where the period specified in the sentence to which the direction applies
- 20 has not expired, to be an order under section 19 of the Children (Criminal Proceedings) Act 1987.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 2 of that Act.

25 Persons detained in shelters under section 92 of the Child Welfare Act 1939

18. (1) A person detained, pursuant to section 92 of the Child Welfare Act 1939, in a shelter on the appointed day may continue to be so detained but for not more than 14 days commencing on that day.

- (2) In this clause, “the appointed day” means the day appointed and notified under
- 30 section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Persons transferred to institutions under section 94 of the Child Welfare Act 1939

19. (1) A person transferred, pursuant to section 94 of the Child Welfare Act 1939, from a prison to an institution before the appointed day and detained in an institution
- 35 on that day shall, on and from that day, be deemed to be a person transferred to a detention centre pursuant to section 10 of the Children (Detention Centres) Act 1987.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Persons detained in shelters under section 135 of the Child Welfare Act 1939

20. (1) A person detained, pursuant to section 135 of the Child Welfare Act 1939, in a shelter on the appointed day shall be forthwith discharged from the shelter.

5 (2) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) in relation to the commencement of section 3 in its application to section 135 of the Child Welfare Act 1939.

Orders under section 136 of the Child Welfare Act 1939

21. (1) An order in force under section 136 of the Child Welfare Act 1939 immediately before the appointed day shall cease to have effect on that day.

10 (2) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) in relation to the commencement of section 3 in its application to section 136 of the Child Welfare Act 1939.

Interstate wards

15 22. (1) A person who, immediately before the appointed day, was an interstate ward referred to in section 139A of the Child Welfare Act 1939 shall, on and from that day, be deemed to be an interstate ward within the meaning of section 95 of the Children (Care and Protection) Act 1987.

20 (2) Any arrangements referred to in section 139A (3) (a) of the Child Welfare Act 1939 that were in force immediately before the appointed day shall, on and from that day, be deemed to be arrangements referred to in section 95 (2) (a) of the Children (Care and Protection) Act 1987.

(3) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

25

PART 3

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—MAINTENANCE ACT
1964

Interpretation

23. In this Part—

30 "prescribed Local Court" means the Local Court held at 323 Castlereagh Street, Sydney;

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

“the appointed day” means the day appointed and notified under section 2 (5) in relation to the commencement of the provisions of Schedule 3 relating to the Maintenance Act 1964.

Pending proceedings under Maintenance Act 1964

5 24. (1) Any proceedings commenced under the Maintenance Act 1964 and pending in a court immediately before the appointed day may be continued and completed, and any order may be made in those proceedings and shall, subject to this Part, be given effect to, as if this Act had not been enacted.

(2) The provisions of this Part apply to and in respect of any order made or any thing
10 done by a court in any proceedings referred to in subclause (1) as if the order had been made or the thing done immediately before the appointed day.

Savings—Maintenance Act 1964

25. (1) Any order made, registered or confirmed or deemed to have been made, registered or confirmed under the Maintenance Act 1964 and in force immediately before
15 the appointed day shall, on and from that day, be deemed—

(a) to have been made, registered or confirmed, as the case may be, under that Act, as amended by this Act, and may be enforced, discharged, suspended, varied or annulled or otherwise dealt with as if it had been so made, registered or confirmed; and

20 (b) to have been made—

(i) where there is a Local Court at the place where the order was made, by that Local Court; or

(ii) where there is no Local Court at the place where the order was made, by the Local Court nearest by the most practicable route to the place where the
25 order was made.

(2) All records with respect to an order referred to in subclause (1) shall, as soon as practicable after the appointed day, be transferred to, and become records of, the Local Court by which the order is, by subclause (1) (b), to be deemed to have been made.

(3) Any overseas order, within the meaning of Division 1 of Part IV of the
30 Maintenance Act 1964, registered immediately before the appointed day under Division 3 of that Part shall, on and from that day, be deemed to be an overseas order registered under Division 3 of that Part, as amended by this Act, in the prescribed Local Court.

(4) All records with respect to any overseas order referred to in subclause (3) shall, as soon as practicable after the appointed day, be transferred to, and become records of,
35 the prescribed Local Court.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

PART 4

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—INFANTS' CUSTODY
AND SETTLEMENTS ACT 1899**Maintenance orders under Infants' Custody and Settlements Act 1899**

- 5 26. (1) Any order for the payment of a weekly or other periodical sum made by a children's court under the Infants' Custody and Settlements Act 1899 in the exercise of the powers and authorities conferred by section 12 (2) of the Child Welfare Act 1939 and in force immediately before the appointed day shall, on and from that day, be
10 deemed to be an order for the payment of such a sum made by a Local Court under the firstmentioned Act.

(2) In this clause, "the appointed day" means the day appointed and notified under section 2 (5) in relation to the commencement of the provisions of Schedule 3 relating to the Infants' Custody and Settlements Act 1899.

PART 5

15

GENERAL

References in other Acts, etc.

27. (1) On and from the appointed day, a reference in any Act (whether enacted before or after the date of assent to this Act) or in any other instrument or document, whether of the same or of a different kind—

- 20 (a) to the Child Welfare Act 1939;
(b) to the Community Welfare Act 1982; or
(c) to any provision of either of those Acts,
extends to include a reference—
(d) to the Community Welfare Act 1987;
25 (e) to the Children's Court Act 1987;
(f) to the Children (Care and Protection) Act 1987;
(g) to the Children (Criminal Proceedings) Act 1987;
(h) to the Children (Community Service Orders) Act 1987;
(i) to the Children (Detention Centres) Act 1987; or

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(j) to the corresponding provision of the relevant Act,
as the case requires.

(2) In this clause, a reference to the appointed day—

- 5 (a) in relation to a reference to the Child Welfare Act 1939—is a reference to the day on which the last of the provisions of that Act is repealed by this Act;
- (b) in relation to a reference to a provision of the Child Welfare Act 1939—is a reference to the day on which that provision is repealed by this Act; or
- (c) in relation to the Community Welfare Act 1982 or a provision of that Act—is a reference to the date of assent to this Act.

10 **Regulations**

28. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the 1987 Community Welfare legislation.

15 (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on and from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- 20 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication in the Gazette.

25 (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

MISCELLANEOUS ACTS (COMMUNITY WELFARE) REPEAL AND AMENDMENT BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Repeal of Act No. 17, 1939
 4. Repeal of Act No. 76, 1982
 5. Repeals consequent upon the repeal of Act No. 17, 1939, and certain other repeals
 6. Repeals consequent upon the repeal of Act No. 76, 1982
 7. Amendments
 8. Further amendments
 9. Savings, transitional and other provisions
- SCHEDULE 1—REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND CERTAIN OTHER REPEALS
- SCHEDULE 2—REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 76, 1982
- SCHEDULE 3—AMENDMENTS
- SCHEDULE 4—FURTHER AMENDMENTS
- SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS
-

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 repeal certain enactments and to amend certain other enactments, and to enact savings, transitional and other provisions, consequent upon the enactment of the Community Welfare Act 1987, the Children's Court Act 1987, the Children (Care and Protection) Act 1987, the Children (Criminal Proceedings) Act 1987, the Children (Community Service Orders) Act 1987 and the Children (Detention Centres) Act 1987.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 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 Short title

1. This Act may be cited as the "Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987".

Commencement

2. (1) Subject to this section, this Act shall commence on the date of
10 assent to this Act.

(2) Section 3, in its application to a provision of the Child Welfare Act 1939, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(3) Section 7, in its application to a provision of Schedule 3, shall
15 commence on the day on which the provision commences.

(4) Section 8, in its application to a provision of Schedule 4, shall commence on the day on which the provision commences.

(5) Except as provided by subsection (6), the provisions of Schedule 3 shall commence on such day or days as may be appointed by the Governor
20 and notified by proclamation published in the Gazette.

(6) Item (2) of the provisions of Schedule 3 relating to the Prisoners (Interstate Transfer) Act 1982 shall, if the day on which item (1) of those provisions commences is earlier than the day appointed and notified under section 2 (2) of the Prisoners (Interstate Transfer) Amendment Act 1986,
25 commence on the day so appointed and notified.

(7) Item (5) of the provisions of Schedule 4 relating to the Adoption of Children Act 1965 shall commence—

(a) on the date of assent to this Act; or

(b) on the respective day or days on which sections 6E, 6K and 6R (as
30 to be inserted by the Adoption of Children (Amendment) Act 1980 and, in the case of sections 6E and 6R, as amended by the Adoption of Children (Amendment) Act 1982) of the Adoption of Children Act 1965 commence, as the case requires,

whichever is the later.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

(8) Item (1) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- 5 (b) on the commencement of the Education and Public Instruction Act 1987,

whichever is the later.

(9) Item (2) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- 10 (b) on the commencement of the Private Health Establishments Act 1982,

whichever is the later.

(10) Item (3)(a) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- 15 (a) on the date of assent to this Act; or
- (b) on the commencement of Division 1 of Part II of the Mental Health Act 1983,

whichever is the later.

(11) Item (3)(b) of the provisions of Schedule 4 relating to the Children 20 (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of Division 2 of Part II of the Mental Health Act 1983,

whichever is the later.

25 (12) Item (4) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of the Interpretation Act 1987,

whichever is the later.

30 **Repeal of Act No. 17, 1939**

- 3. The Child Welfare Act 1939 is repealed.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

Repeal of Act No. 76, 1982

4. The Community Welfare Act 1982 is repealed.

Repeals consequent upon the repeal of Act No. 17, 1939, and certain other repeals

- 5 5. Each Act specified in Schedule 1 is, to the extent indicated in that Schedule, repealed.

Repeals consequent upon the repeal of Act No. 76, 1982

6. Each Act specified in Schedule 2 is, to the extent indicated in that Schedule, repealed.

10 Amendments

7. Each Act specified in Schedule 3 is amended in the manner set forth in that Schedule.

Further amendments

8. Each Act specified in Schedule 4 is amended in the manner set forth in that Schedule.

Savings, transitional and other provisions

9. Schedule 5 has effect.

SCHEDULE 1

(Sec. 5)

20 REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND CERTAIN OTHER REPEALS

- Statute Law Revision Act 1937 No. 35—so much of the Second Schedule as amends Act No. 51, 1916
 Government Relief Administration (Amendment) Act 1940 No. 33—the whole Act
 25 Child Welfare (Amendment) Act 1955 No. 14—the whole Act
 Child Welfare (Amendment) Act 1956 No. 9—the whole Act
 Deserted Wives and Children (Amendment) Act 1960 No. 21—section 1 (4) and (5) and sections 3, 4 and 7
 Child Welfare (Amendment) Act 1961 No. 15—the whole Act
 30 Child Welfare (Amendment) Act 1966 No. 11—the whole Act

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 1—*continued*

REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND
CERTAIN OTHER REPEALS—*continued*

- Child Welfare (Amendment) Act 1967 No. 27—the whole Act
 Child Welfare (Amendment) Act 1969 No. 27—the whole Act
 Metric Conversion Act 1974 No. 51—so much of the Schedule as amends Act No. 51, 1916
- 5 Youth and Community Services (Amendment) Act 1976 No. 44—the whole Act
 Statute Law Revision Act 1976 No. 63—so much of Schedule 1 as amends Act No. 24, 1930
 Public Hospitals (Amendment) Act 1976 No. 95—so much of Schedule 5 as amends Act No. 24, 1930
- 10 Children (Equality of Status) Act 1976 No. 97—so much of Schedule 1 as amends Act No. 17, 1939
 Notice of Action and Other Privileges Abolition Act 1977 No. 19—so much of Schedule 1 as amends Act No. 17, 1939
 Child Welfare (Amendment) Act 1977 No. 20—the whole Act
- 15 Maintenance (Amendment) Act 1977 No. 43—so much of section 3 as relates to Schedules 3, 5 and 6, sections 5, 7 and 8 and Schedules 3, 5 and 6
 Child Welfare (Further Amendment) Act 1977 No. 100—the whole Act
 Child Welfare (Bail) Amendment Act 1978 No. 163—the whole Act
 Youth and Community Services (Amendment) Act 1979 No. 130—the whole Act
- 20 Child Welfare (Amendment) Act 1979 No. 131—the whole Act
 Child Welfare (Coroners) Amendment Act 1980 No. 28—the whole Act
 Child Welfare (Amendment) Act 1981 No. 43—the whole Act
 Miscellaneous Acts (Local Courts) Amendment Act 1982 No. 168—so much of Schedule 1 as amends Act No. 17, 1939
- 25 Child Welfare (Probation and Parole) Amendment Act 1983 No. 195—the whole Act
 Child Welfare (Criminal Injuries Compensation) Amendment Act 1984 No. 72—the whole Act
 Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 71, 1979
- 30 Miscellaneous Acts (Search Warrants) Amendment Act 1985 No. 38—so much of Schedule 1 as amends Act No. 17, 1939
 Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985 No. 59—so much of Schedule 1 as amends Act No. 17, 1939
- 35 Miscellaneous Acts (Annual Reports—Departments) Amendment Act 1985 No. 157—so much of Schedule 1 as amends Act No. 17, 1939
 Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Act 1985 No. 227—so much of Schedule 1 as amends Act No. 17, 1939
 Miscellaneous Acts (Area Health Services) Amendment Act 1986 No. 53—so much of Schedule 1 as amends Act No. 17, 1939 and Act No. 90, 1973
-

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 2

(Sec. 6)

REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 76, 1982

- 5 Adoption of Children (Community Welfare) Amendment Act 1982 No. 77—the whole Act
- Bail (Community Welfare) Amendment Act 1982 No. 78—the whole Act
- Community Service Orders (Community Welfare) Amendment Act 1982 No. 79—the whole Act
- Coroners (Community Welfare) Amendment Act 1982 No. 80—the whole Act
- 10 Crimes (Community Welfare) Amendment Act 1982 No. 81—the whole Act
- Defamation (Community Welfare) Amendment Act 1982 No. 82—the whole Act
- Infants' Custody and Settlements (Community Welfare) Amendment Act 1982 No. 83—the whole Act
- Justices (Community Welfare) Amendment Act 1982 No. 84—the whole Act
- 15 Land and Environment Court (Community Welfare) Amendment Act 1982 No. 85—the whole Act
- Maintenance (Community Welfare) Amendment Act 1982 No. 86—the whole Act
- Mental Health (Community Welfare) Amendment Act 1982 No. 87—the whole Act
- Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1982 No. 88—the whole Act
- 20 Public Instruction (Community Welfare) Amendment Act 1982 No. 90—the whole Act
- Statutory and Other Offices Remuneration (Children's Panel Council) Amendment Act 1982 No. 91—the whole Act
- Community Welfare (Private Health Establishments) Amendment Act 1982 No. 132—the whole Act
- 25 Miscellaneous Acts (Local Courts) Amendment Act 1982 No. 168—so much of Schedule 2 as amends Act No. 76, 1982 and Act No. 78, 1982
- Community Welfare (Amendment) Act 1983 No. 2—the whole Act
- Miscellaneous Acts (Community Welfare) Amendment Act 1983 No. 3—the whole Act
- 30 Statutory and Other Offices Remuneration (Children's Boards of Review) Amendment Act 1983 No. 4—the whole Act
- Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1983 No. 181—so much of Schedule 1 as amends Act No. 87, 1982 and Act No. 3, 1983
- Crimes (Compensation) Amendment Act 1984 No. 70—section 4
- 35 Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 76, 1982 and Act No. 82, 1982
- Miscellaneous Acts (Search Warrants) Amendment Act 1985 No. 38—so much of Schedule 1 as amends Act No. 76, 1982
- Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985 No. 59—so much of Schedule 1 as amends Act No. 76, 1982
- 40 Community Welfare (Child Assault) Amendment Act 1985 No. 150—the whole Act
- Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Act 1985 No. 227—so much of Schedule 1 as amends Act No. 76, 1982
- Statute Law (Miscellaneous Provisions) Act 1985 No. 231—so much of Schedule 31 as
- 45 amends Act No. 88, 1982

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3

(Sec. 7)

AMENDMENTS

Adoption of Children Act 1965 No. 23—

5 (1) Section 6, definition of "Foster parent" —

Omit the definition, insert instead:

"Foster parent" means any person—

- 10 (a) who has the care of a child in accordance with a fostering authority held by the person under the Children (Care and Protection) Act 1987;
- (b) who has the care of a child that has been placed in the care of the person by, or with the written approval of, the Minister administering the Children (Care and Protection) Act 1987 or the Director-General; or
- 15 (c) who has the care of a child that has been placed in the care of the person by an authorised private fostering agency within the meaning of the Children (Care and Protection) Act 1987.

(2) Section 18 (1) (b) (ii)—

Omit the subparagraph, insert instead:

- 20 (ii) had, as a ward within the meaning of the Child Welfare Act 1939 or the Children (Care and Protection) Act 1987, been in the care or custody of the applicant or applicants or with the applicant and a deceased spouse of the applicant.

(3) Section 24—

- 25 Omit "an order placing the child in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as a ward admitted to State control", insert instead " , where the child has not attained the age of 18 years, an order declaring the child to be a ward under the Children (Care and Protection) Act 1987".

30 (4) Section 31A (2)—

Omit the subsection, insert instead:

- 35 (2) Where, in relation to a child referred to in section 26 (3) who is a ward within the meaning of the Children (Care and Protection) Act 1987, a consent to the adoption of the child is given by the mother of the child, the Director-General shall make the inquiries referred to in subsection (1) in order to ascertain whether any person, as at the date on which the consent is given, is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

- (5) (a) Section 34 (2) (a), (2D), (5) (d)—

Omit “Child Welfare Act, 1939” wherever occurring, insert instead “Children (Care and Protection) Act 1987”.

- (b) Section 34 (4)—

- 5 Omit the subsection, insert instead:

(4) Without limiting the generality of subsection (3), an order under that subsection may, where the child has not attained the age of 18 years, declare the child to be a ward under the Children (Care and Protection) Act 1987, or order that the child remain under the guardianship of the Director-General for a further period of one year.

10

- (6) Section 35 (1) (d)—

Omit “section 9 of the Child Welfare Act, 1939”, insert instead “section 90 of the Children (Care and Protection) Act 1987”.

- (7) Section 43 (2)—

- 15 Omit “an order placing the child in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as a ward admitted to State control”, insert instead “, where the child has not attained the age of 18 years, an order declaring the child to be a ward under the Children (Care and Protection) Act 1987”.

20 **Bail Act 1978 No. 161—**

- (1) (a) Section 4 (1), definition of “conviction” —

Omit “83 (3) of the Child Welfare Act, 1939”, insert instead “33 (1) (a) of the Children (Criminal Proceedings) Act 1987”.

- (b) Section 4 (1), definition of “Local Court” —

- 25 Omit “a children’s court under the Child Welfare Act, 1939”, insert instead “the Children’s Court”.

- (c) Section 4 (1), definition of “magistrate” —

Omit “a special magistrate under the Child Welfare Act, 1939”, insert instead “a member of the Children’s Court”.

- 30 (d) Section 4 (2) (d)—

Omit “and”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(e) Section 4 (2) (e), (f)—

At the end of section 4 (2) (e), insert:

; and

- 5 (f) a person who may appear or be brought before a court pursuant to section 21 (1) (d) or 26 (1) (c) of the Children (Community Service Orders) Act 1987.

(f) Section 4 (6)—

Omit the subsection, insert instead:

- 10 (6) A reference in this Act to a prison includes, in the case of a person who is under the age of 18 years, a reference to a detention centre within the meaning of the Children (Detention Centres) Act 1987.

(2) (a) Section 6 (g) (ii)—

Omit “and”.

(b) Section 6 (g1)–(g3)—

- 15 After section 6 (g), insert:

- (g1) the period during which an application for revocation, extension or amendment of a community service order (within the meaning of the Community Service Orders Act 1979) or a children’s community service order (within the meaning of the Children (Community Service Orders) Act 1987) is pending;
- 20 (g2) the period between a person’s being convicted of an offence under section 23 (1) of the Community Service Orders Act 1979 and the person’s appearing, pursuant to that Act, before the court that made the community service order, within the meaning of that Act, to which the person is subject;
- 25 (g3) the period between a person’s being found guilty of an offence under section 24 (1) of the Children (Community Service Orders) Act 1987 and the person’s appearing, pursuant to that Act, before the court that made the children’s community service order, within the meaning of that Act, to which the person is subject; and
- 30

(3) (a) Section 8 (1) (a)—

Omit “and”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(b) Section 8 (1) (b), (c)—

At the end of section 8 (1) (b), insert:

; and

- 5 (c) all offences (whether or not of a kind referred to in paragraph (a) or (b))
in respect of which a person is an accused person by virtue of section 4
(2) (e) or (f),

(4) (a) Section 16 (d)—

Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the
Children (Criminal Proceedings) Act 1987”.

10 (b) Section 16 (d)—

Omit “children’s court”, insert instead “Children’s Court”.

(5) (a) Section 24 (5)—

Omit “a children’s court”, insert instead “the Children’s Court”.

(b) Section 24 (5)—

- 15 Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the
Children (Criminal Proceedings) Act 1987”.

(6) (a) Section 26 (1) (g)—

Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the
Children (Criminal Proceedings) Act 1987”.

20 (b) Section 26 (1) (g)—

Omit “children’s court”, insert instead “Children’s Court”.

(7) Section 32 (4), (5)—

After section 32 (3), insert:

- 25 (4) In having regard to the details of residence, as referred to in subsection
(1) (a) (i), of an accused person who is under the age of 18 years, the fact that
the person does not reside with a parent or guardian of the person shall be
ignored.

- 30 (5) The reference in subsection (1) (a) (i) to an accused person’s residence
includes a reference to the residential address at which the person may
generally be found.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(8) Section 58 (3A)—

After section 58 (3), insert:

- 5 (3A) This section does not apply in relation to an indemnity or an agreement to indemnify given by the Minister administering the Children (Care and Protection) Act 1987 to an officer of the Department of Youth and Community Services against any forfeiture which the officer may incur as a result of entering into any agreement under section 36 for the purpose of fulfilling a condition imposed on the grant of bail to a ward within the meaning of the Children (Care and Protection) Act 1987.

10 Commonwealth Powers (Family Law—Children) Act 1986 No. 182—

Schedule 1—

Omit “Child Welfare Act 1939”.

Community Service Orders Act 1979 No. 192—

Section 4 (1)—

- 15 Omit “Where a person of or over 18 years of age is before a court for sentencing after being convicted of an offence punishable by imprisonment, whether or not it is also punishable by a fine,” insert instead:

Where a person—

- 20 (a) who has committed an offence punishable by imprisonment (whether or not it is also punishable by a fine); and

(b) o

- (i) had attained the age of 18 years when the offence was committed; or

- 25 (ii) had not then attained that age but had attained the age of 21 years when the person was charged before a court with the offence,

is before a court for sentencing after being convicted of the offence,

Coroners Act 1980 No. 27—

(1) Section 13 (3) (h)—

- 30 Omit “an institution within the meaning of the Child Welfare Act, 1939”, insert instead “a residential child care centre licensed under the Children (Care and Protection) Act 1987 or a facility within the meaning of that Act or in a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(2) Section 13 (3) (h)—

Omit “or institution”, insert instead “, residential child care centre, facility or detention centre”.

Crimes Act 1900 No. 40—

5 (1) Section 19—

Omit “The provisions”, insert instead “Except in the case of murder committed by a person who is under the age of 18 years, the provisions”.

(2) Section 340 (2)—

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

(3) Section 353A (3)—

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

(4) Sections 353AA, 353AB—

15 After section 353A, insert:

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

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

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

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

(a) to the Children’s Court; or

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

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

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

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

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

Destruction of certain photographs, finger-prints, etc.

5 353AB. Where a court finds an offence alleged against a child who has had the child's photograph, finger-prints and palm-prints taken in accordance with section 353A (3) or 353AA not proved, the court shall cause to be served on—

(a) the child;

(b) where practicable, the parents or guardian of the child; and

(c) any other person who has the care of the child,

10 a notice stating that if the child or they so desires or desire, the court will order that the photograph, finger-prints and palm-prints, and all other records (other than the records of the court), relating to the alleged offence be destroyed and the court may make the order accordingly.

(5) Section 556A (1B)—

15 After section 556A (1A), insert:

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

(6) Section 558 (1A)—

20 After section 558 (1), insert:

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

Defamation Act 1974 No. 18—

25 Section 17H—

After section 17G, insert:

Matters arising under the Children (Care and Protection) Act 1987

30 17H. There is a defence of absolute privilege for the publication of a report made under section 100 (6) of the Children (Care and Protection) Act 1987 by a Board of Review established under that Act.

Fines and Forfeited Recognizances Act 1954 No. 25—

(1) Section 6 (1). (1A)—

Omit "or special magistrate" wherever occurring.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(2) Section 6 (2) (a)—

Omit “or a children’s court holden in either case before a Magistrate or special magistrate”, insert instead “constituted by a Magistrate or the Children’s Court”.

5 Infants’ Custody and Settlements Act 1899 No. 39—

(1) Section 10A (3)—

After “shall” where secondly occurring, insert “, subject to subsections (3A) and (3B).”.

(2) Section 10A (3A), (3B)—

10 After section 10A (3), insert:

(3A) Any order for the payment of a weekly or other periodical sum made by a Local Court in the exercise of the powers and authorities conferred by this Part shall have effect as an order for the payment, at the weekly or other periods stated in the order, of successive amounts of money equal to the sums specified in the order.

15

(3B) If default is made in the payment of any one or more of the weekly or other periodical sums referred to in subsection (3A), the order for the payment of that sum or the total of those sums then in default for any period not exceeding 6 months may be enforced as if the order were an order for the payment of a sum of money equal to that sum or the total of those sums made under the Local Courts (Civil Claims) Act 1970 by the Local Court which made the order.

20

(3) Section 10A (5)—

After section 10A (4), insert:

25

(5) The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to proceedings under this Act in a Local Court in the same way as they apply to criminal proceedings.

Judicial Officers Act 1986 No. 100—

(1) Section 3 (1), definition of “Magistrate”—

30

Omit “a special magistrate.”.

(2) Section 3 (1), definition of “Magistrate”—

After “industrial magistrate”, insert “, but does not include a member of the Children’s Court in his or her capacity as a member of that Court”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

Jury Act 1977 No. 18—

(1) Schedule 1, clause 2 (b)—

Omit “an institution for juvenile offenders”, insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

5 (2) Schedule 2, clause 4—

Omit “special magistrates”, insert instead “members of the Children’s Court”.

Justices Act 1902 No. 27—

(1) Section 84A—

Before section 85, insert:

10 **Traffic offences committed by children**

84A. (1) In this section—

15 “child”, in relation to a traffic offence, includes a person who was under the age of 18 years when the person committed the offence and was under the age of 21 years when the person was charged before a Justice or Justices with the offence;

“traffic offence” has the same meaning as it has in the Children (Criminal Proceedings) Act 1987.

20 (2) A Justice or Justices may, in respect of a child found guilty of a traffic offence, deal with the child in accordance with Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987.

(3) For the purpose of dealing with a person in accordance with Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987, a Justice or Justices shall have and may exercise the functions of the Children’s Court under that Division in the same way as if—

25 (a) the Justice or Justices were the Children’s Court; and

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

(4) A Justice or Justices may not impose a sentence of imprisonment on a child found guilty of a traffic offence.

(2) Section 104A (1), definition of “Magistrate” —

30 Omit “a special magistrate under the Child Welfare Act 1939”, insert instead “a member of the Children’s Court”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

(3) Section 132A—

After section 132, insert:

Appeals where powers referred to in sec. 84A exercised

132A. (1) In this section—

5 “child”, in relation to a traffic offence, includes a person who was under the age of 18 years when the person committed the offence and was under the age of 21 years when the person was charged before a Justice or Justices with the offence;

10 “traffic offence” has the same meaning as it has in the Children (Criminal Proceedings) Act 1987.

15 (2) A proceeding by way of appeal or review in the Supreme Court or on appeal to the District Court may, in respect of any determination, conviction, finding of guilt or order made by a Justice or Justices in respect of a traffic offence committed by a child, be taken by the child concerned or, if the child concerned is under 18 years of age, on the child's behalf and in the child's name by a person responsible, within the meaning of the Children (Care and Protection) Act 1987, for the child or by the child's solicitor.

Land and Environment Court Act 1979 No. 204—

Section 64 (3)—

20 After section 64 (2), insert:

25 (3) Without affecting the generality of subsection (1), the Minister administering the Community Welfare Act 1987 may, at any stage of any proceedings before the Court in which an approved non-Government organisation within the meaning of that Act is a party, with the consent of that organisation, intervene by counsel, solicitor or agent and may examine witnesses and address the Court with respect to matters relevant to proceedings.

Land Tax Management Act 1956 No. 26—

Section 10 (1) (g) (ii)—

30 Omit “a place licensed under Part VII of the Child Welfare Act, 1939, as amended by subsequent Acts.”, insert instead “a residential child care centre licensed under the Children (Care and Protection) Act 1987”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

Local Courts Act 1982 No. 164—

Section 14 (5)—

After section 14 (4), insert:

- 5 (5) The Chief Magistrate may not make such a requirement in respect of a Magistrate who is a member of the Children's Court except with the consent of the senior member of that Court.

Maintenance Act 1964 No. 74—

(1) Section 4 (7A)—

After section 4 (7), insert:

- 10 (7A) This section has effect subject to clause 25 of Schedule 5 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987.

(2) Section 5 (9A)—

After section 5 (9), insert:

- 15 (9A) This section has effect subject to clause 25 of Schedule 5 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987.

(3) (a) Section 7 (1), definition of "Court"—

Omit the definition, insert instead:

"Court" means a Local Court held before a Magistrate.

(b) Section 7 (1), definition of "Special magistrate"—

- 20 Omit the definition.

(4) Part II, Division 1, heading—

Omit "*Children's Courts*", insert instead "*Local Courts*".

(5) (a) Section 8A (1)—

Omit the subsection.

- 25 (b) Section 8A (2)—

- 30 Omit "subsection (1) (a), (b) or (c) has been made in respect of a child, or a child has been admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939, or the care of a child has been arranged under section 48G of that Act", insert instead "section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987 has been made in respect of a child, or a child is a ward within the meaning of that Act or a person subject to control within the meaning of the Children (Detention Centres) Act 1987,".

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

- (c) Section 8A (3), (4)—

Omit the subsections.

- (d) Section 8A (5)—

Omit the subsection, insert instead:

- 5 (5) The Director-General may certify in writing that a specified child—

- (a) is, at the date of the certificate—

- (i) a child in respect of whom an order referred to in section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987 is in force;

- (ii) a ward within the meaning of that Act; or

- 10 (iii) a person subject to control within the meaning of the Children (Detention Centres) Act 1987; and

- (b) was, during a specified period commencing not earlier than 3 months before the date of the certificate, such a child, ward or person,

- 15 and such a certificate purporting to be signed by the Director-General is, without proof of the Director-General's office or signature, evidence of the matters certified.

- (6) (a) Section 10 (3) (a)—

Omit the paragraph, insert instead:

- 20 (a) in respect of a child in respect of whom a complaint or application for maintenance is made as referred to in section 8A; or

- (b) Section 10 (3) (b)—

Omit "Child Welfare Act, 1939, as amended by subsequent Acts", insert instead "Children (Care and Protection) Act 1987".

- (c) Section 10 (3)—

- 25 Omit "such a ward", insert instead "such a child".

- (7) (a) Section 22 (5)—

Omit "under the Child Welfare Act, 1939, as amended by subsequent Acts", insert instead "administering the Children (Care and Protection) Act 1987".

- (b) Section 22 (5)—

- 30 Omit ", as so amended,".

- (8) (a) Section 24 (1)—

Omit "a special magistrate", insert instead "a Magistrate".

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

(b) Section 24 (1)—

Omit “magistrate” where secondly and thirdly occurring, insert instead “Magistrate”.

(9) (a) Section 26 (c)—

5 After “8A” where firstly occurring, insert “(2)”.

(b) Section 26 (c)—

Omit:

ceases to be—

10 (i) a child subject to an order referred to in section 8A (1) (a), (b) or (c) or 8A (3);

(ii) a child admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939; or

(iii) a child whose care has been arranged under section 48G of that Act, as the case may be.

15 Insert instead:

ceases to be a child the subject of an order referred to in section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987, a ward within the meaning of that Act or a person subject to control within the meaning of the Children (Detention Centres) Act 1987.

20 (10) Section 35 (3A)—

Omit the subsection, insert instead:

(3A) Where an order (including a varied order) is in force under this Part for the maintenance of a child and the child becomes or is—

25 (a) a child in respect of whom an order referred to in section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987 is in force;

(b) a ward within the meaning of that Act;

(c) a person subject to control within the meaning of the Children (Detention Centres) Act 1987; or

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

- (d) a child in respect of whom financial assistance is being, or has been, given under the Children (Care and Protection) Act 1987 or any Act repealed by the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987,
- 5 the court may, on application by a person authorised for the purpose by the Director-General and upon notice being given to such persons and in such manner as the court directs, vary the order in so far as it relates to the receipt or disbursement of money payable under the order.
- (11) (a) Section 38 (1)—
- 10 Omit “special magistrate”, insert instead “court”.
- (b) Section 38 (2), (3)—
- Omit “magistrate” wherever occurring, insert instead “court”.
- (c) Section 38 (2)—
- Omit “he thinks”, insert instead “it thinks”.
- 15 (12) Section 66 (1), definition of “New South Wales order” —
- Omit “special magistrate”, insert instead “Magistrate”.
- (13) (a) Section 83 (4)—
- Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.
- 20 (b) Section 83 (5)—
- Omit “court”, insert instead “prescribed court”.
- (14) (a) Section 86 (1)—
- Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.
- 25 (b) Section 86 (2)—
- Omit “court”, insert instead “prescribed court”.
- (15) (a) Section 88 (1)—
- Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.
- 30 (b) Section 88 (1)—
- Omit “in the court”, insert instead “in the prescribed court”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(16) (a) Section 90 (1), (2)—

Omit “Metropolitan Children’s Court at Sydney” wherever occurring, insert instead “prescribed court”.

(b) Section 90 (5)—

5 Omit “The court”, insert instead “The prescribed court”.

(17) Section 93 (1)—

Omit “the court”, insert instead “the prescribed court”.

(18) Section 105A—

After section 105, insert:

10 **Exclusion of persons from hearing of complaints**

105A. During the hearing of any complaint under this Act, no person shall be or be permitted to be present in court except any one or more of the following:

- 15 (a) the adjudicating Magistrate, any officer within the meaning of the Children (Care and Protection) Act 1987, the officers of the court, and a member of the police force;
- (b) the complainant and the defendant, and their respective barristers and solicitors;
- 20 (c) the mother, sister or other relative or friend of the complainant, if desired by the complainant;
- (d) any person while being examined as a witness;
- (e) the mother, sister or female friend of any female witness, if desired by the witness while being examined;
- (f) any other person permitted by the court to be present.

25 (19) Section 108A—

After section 108, insert:

Publicity

30 108A. The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to the hearing of a complaint or application under this Act in the same way as they apply to criminal proceedings.

(20) Section 109 (a1)—

Omit “(1) or”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(21) Section 113 (7)—

Omit the subsection, insert instead:

- 5 (7) The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to the hearing of an appeal under this section in the same way as they apply to criminal proceedings.

(22) Section 117A—

Omit “special magistrate”, insert instead “Magistrate”.

Pre-Trial Diversion of Offenders Act 1985 No. 153—

Section 4 (1) (b)—

- 10 Omit “a Justice exercising the jurisdiction of a children’s court”, insert instead “the Children’s Court”.

Prisoners (Interstate Transfer) Act 1982 No. 104—

(1) Section 5 (1), definition of “sentence of imprisonment” —

- 15 Omit “an institution within the meaning of the Child Welfare Act, 1939,” insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

(2) Section 5 (1), definition of “State sentence of imprisonment”—

- 20 Omit “an institution within the meaning of the Child Welfare Act 1939”, insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Prisons Act 1952 No. 9—

Section 4 (1), definition of “prison” —

After “a prison”, insert “, but does not include a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

25 **Probation and Parole Act 1983 No. 194—**

(1) (a) Section 4 (1), definition of “prison” —

After “1952”, insert “, and includes a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

(b) Section 4 (1), definition of “prisoner” —

- 30 Omit the definition, insert instead:

“prisoner” means—

- (a) a prisoner within the meaning of the Prisons Act 1952; or

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

- (b) a person subject to control within the meaning of the Children (Detention Centres) Act 1987 by virtue of—
- 5 (i) an order in force under section 10 of that Act whereby the person has been transferred from a prison to a detention centre; or
- (ii) an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that the whole or any part of a term of imprisonment imposed on the person be served in a detention centre;
- 10 (c) Section 4 (1), definition of “term of imprisonment” —
- (i) At the end of paragraph (d), insert “or”.
- (ii) From paragraph (e), omit “or”.
- (iii) Omit paragraph (f).
- (d) Section 4 (1A)—
- 15 After section 4 (1), insert:
- (1A) In this Act, a reference to the governor of a prison includes, in relation to a detention centre within the meaning of the Children (Detention Centres) Act 1987, a reference to the superintendent of a detention centre.
- (2) (a) Section 47 (3)—
- 20 Omit “the Director, as defined in section 4 (1) of that Act”, insert instead “or was formerly a person subject to control, within the meaning of the Children (Detention Centres) Act 1987, the Director-General”.
- (b) Section 47 (3)—
- 25 After “institution” where lastly occurring, insert “or while a person subject to control, as the case may be”.
- (c) Section 47 (6)—
- After section 47 (5), insert:
- (6) In this section—
- 30 (a) a reference to the Commission, in relation to a prisoner or person referred to in subsection (3), is a reference to the Director-General; and
- (b) a reference to the Director-General is a reference to the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
 AMENDMENTS—*continued*

(3) Section 53—

Omit the section.

(4) Schedule 3, clause 6—

Omit the clause.

5 (5) Schedule 4—

Omit the Schedule.

Public Instruction (Amendment) Act 1916 No. 51—

(1) Section 2 (1), definition of “The Court” —

Omit the definition, insert instead:

10 “The Court” means a Local Court held before a Magistrate.

(2) Sections 3A, 8, 9—

Omit the sections.

Public Works Act 1912 No. 45—

Section 34 (6) (a)—

15 Omit “, or an institution constituted under Part X of the Child Welfare Act, 1939, as amended by subsequent Acts”, insert instead “or a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Registration of Births, Deaths and Marriages Act 1973 No. 87—

Section 4 (1), definition of “institution” —

20 Omit paragraph (e), insert instead:

(e) a residential child care centre licensed under the Children (Care and Protection) Act 1987 or a facility within the meaning of that Act or a detention centre within the meaning of the Children (Detention Centres) Act 1987;

25 **Search Warrants Act 1985 No. 37—**

Section 10, definition of “search warrant” —

Omit:

section 145 of the Child Welfare Act 1939;

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

section 295 of the Community Welfare Act 1982;

Insert instead, in alphabetical order of Acts:

sections 24, 61, 94 and 116 of the Children (Care and Protection) Act 1987;

Stamp Duties Act 1920 No. 47—

- 5 Second Schedule, paragraph (e) of the *Exemptions* under the heading “LETTER OR POWER OF ATTORNEY” —

Omit “Children’s Court”, insert instead “the Children’s Court”.

Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)—

(1) Schedule 2, Part 1—

- 10 Omit:

Magistrate (under the Local Courts Act, 1982), other than the Chief Magistrate, a Deputy Chief Magistrate or a Magistrate who has limited tenure or is the holder of a prescribed office, within the meaning of that Act.

- 15 Insert instead:

Magistrate (under the Local Courts Act 1982) other than—

- (a) the Chief Magistrate;
- (b) a Deputy Chief Magistrate;
- (c) the senior member of the Children’s Court;
- 20 (d) a member of the Children’s Court;
- (e) a Magistrate who has limited tenure; or
- (f) a Magistrate who is the holder of a prescribed office, within the meaning of the Local Courts Act 1982.

Senior member of the Children’s Court.

- 25 Member of the Children’s Court.

(2) Schedule 2, Part 1—

At the end of the Part, insert:

Full-time President of the Children’s Review Panel.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued***Supreme Court Act 1970 No. 52—**

Third Schedule, paragraph (f)—

Omit “Part XIV of the Child Welfare Act, 1939”, insert instead “Part 2 of the Children (Criminal Proceedings) Act 1987”.

5 Youth and Community Services Act 1973 No. 90—

(1) Section 3, definition of “relative” —

Omit paragraph (c), insert instead:

(c) a person in whose care or custody the person has been placed in accordance with the provisions of the Adoption of Children Act 1965;

10 (2) Section 27 (b)—

Omit “a neglected child within the meaning of Part XIV of the Child Welfare Act, 1939, and may be dealt with in accordance with the provisions of that Part”, insert instead “a child in need of care within the meaning of the Children (Care and Protection) Act 1987 and may be dealt with in accordance with Part 5 of that Act”.

15

SCHEDULE 4

(Sec. 8)

FURTHER AMENDMENTS

Adoption of Children Act 1965 No. 23—

20 (1) Long title—

Omit “the Child Welfare Act, 1939,”.

(2) Sections 3, 4—

Omit the sections.

(3) Section 5 (1)—

25 Omit “provisions of section 4”, insert instead “repeal of the former Acts”.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

- (4) (a) Section 6, definition of “Director-General” —
 Omit the definition of “Director”, insert instead:
 “Director-General” means the person for the time being holding office or
 acting as the Director-General of the Department of Youth and
 Community Services.
- (b) Section 6, definition of “Principal officer” —
 Omit “Director”, insert instead “Director-General”.
- (c) Section 6, definition of “the former Acts” —
 Omit the definition, insert instead:
 “the former Acts” means all or any of the enactments of the Child Welfare
 Act 1939, or of any Act amending that Act.
- (5) Sections 6E, 6K, 6R—
 Omit “Director” wherever occurring, insert instead “Director-General”.
- (6) Sections 10, 11, 12, 13, 14, 15, 18, 21, 25, 28, 31A, 31B, 32, 34, 41, 49A, 50, 51,
 52, 68A, 68B—
 Omit “Director” wherever occurring, insert instead “Director-General”.
- (7) Sections 28 (3), 34 (4A) (e)—
 Omit “Director’s” wherever occurring, insert instead “Director-General’s”.
- (8) Section 69—
 Omit the section.
- Child Welfare Act 1939 No. 17—**
 Sections 81AA, 81AB—
 After section 81, insert:
Right of appearance
 81AA. (1) In any proceedings under this Part with respect to a neglected or
 uncontrollable child or young person—
 (a) the child or young person and each person responsible for the child or
 young person; and
 (b) the Director-General,
 may appear in person in the proceedings, or be represented by a barrister or
 solicitor or, by leave of the court, by an agent, and may examine and cross-
 examine witnesses on matters relevant to the proceedings.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

(2) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, any other person who, in the opinion of the court, has a genuine concern for the welfare of the child or young person to whom the proceedings relate may, by leave of the court, appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

(3) In this section—

“person responsible”, in relation to a child or young person, means—

(a) a parent of the child or young person;

(b) a person (other than the Minister or the Director-General) who has the care of the child or young person; or

(c) in the case of a child or young person who is in the care of the Minister or the Director-General—a person who had the care of the child or young person immediately before the child or young person came to be in the care of the Minister or the Director-General, as the case may be.

Court’s powers with respect to representation for children

81AB. (1) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, the court may appoint a person to act as guardian ad litem for the child or young person.

(2) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, the court may, if it appears to it that the child or young person ought to be separately represented—

(a) order that the child or young person be separately represented; and

(b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child or young person.

(3) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the court has made an order under subsection (2) (b).

30 Children (Care and Protection) Act 1987—

(1) Section 3 (1), paragraph (a) (i) of the definition of “exempt premises”—

Omit the subparagraph, insert instead:

(i) a State school or a registered school within the meaning of the Education and Public Instruction Act 1987;

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

- (2) Section 3 (1), paragraph (a) (ii) of the definition of “exempt premises”—

Omit the subparagraph, insert instead:

- (ii) a private hospital or nursing home licensed under the Private Health Establishments Act 1982;

- 5 (3) Section 3 (1), paragraph (a) (iii) of the definition of “exempt premises”—

- (a) Omit “an admission centre or a mental hospital within the meaning of the Mental Health Act 1958”, insert instead “a hospital within the meaning of the Mental Health Act 1983”.

- 10 (b) Omit “an authorised hospital within the meaning of the Mental Health Act 1958”, insert instead “an authorised hospital within the meaning of the Mental Health Act 1983”.

- (4) Schedule 4, clause 21 (4)–(8)—

Omit the subclauses, insert instead:

- 15 (4) Part 6 of the Interpretation Act 1987 applies to a rule made under this clause in the same way as it applies to a statutory rule within the meaning of that Act.

Children (Equality of Status) Act 1976 No. 97—

- (1) (a) Section 12 (2), (3)—

Omit the subsections.

- 20 (b) Section 12 (4)—

Omit “or (2)”.

- (c) Section 12 (5) (a)—

Omit “or (2) (a)”.

- (d) Section 12 (7) (a)—

- 25 Omit “1964; or”, insert instead “1964,”.

- (e) Section 12 (7) (b)—

Omit the paragraph.

- (f) Section 12 (7)—

Omit “or discharge, as the case may be,”.

- 30 (2) (a) Section 14 (2), (3)—

Omit the subsections.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

(b) Section 14 (4)—

Omit “or (2)”.

(c) Section 14 (5) (a)—

Omit “or (2) (a)”.

5 (d) Section 14 (7)—

Omit “or (2)”.

Commonwealth Powers (Family Law—Children) Act 1986 No. 182—

Schedule 1—

10 Omit “Community Welfare Act 1982”, insert instead “Children (Care and Protection) Act 1987”.

Evidence Act 1898 No. 11—

(1) Section 43A (a)—

At the end of section 43A (a), insert “or”.

(2) Section 43A (c)—

15 Omit the paragraph.

Finances Adjustment Act 1932 No. 27—

(1) Long title—

Omit “the Government Relief Administration Act, 1930,”.

(2) Section 2—

20 Omit the section.

(3) Part VI—

Omit the Part.

Maintenance Act 1964 No. 74—

(1) Long title—

25 Omit “the Child Welfare Act, 1939–1961,”.

(2) Section 1 (4)—

Omit the subsection.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

- (3) Section 7 (1), definition of "Director-General" —

After the definition of "Court", insert:

- 5 "Director-General" means the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.

- (4) Section 8A (2)—

Omit "permanent head of the Department of the Government administering that Act", insert instead "Director-General".

- (5) (a) Section 28A (1) (a)—

- 10 Omit "permanent head of the Department of the Government administering the Child Welfare Act, 1939," insert instead "Director-General".

- (b) Section 28A (1) (b), (c)—

Omit "that permanent head" wherever occurring, insert instead "the Director-General".

- 15 (6) (a) Section 66 (1), definition of "Certified copy" —

From paragraph (a), omit "permanent head", insert instead "Director-General".

- (b) Section 66 (1), definition of "Permanent head" —

Omit the definition.

- 20 (7) Section 69A (1), (4), (5)—

Omit "permanent head" wherever occurring, insert instead "Director-General".

- (8) Section 80 (1)—

Omit "permanent head" wherever occurring, insert instead "Director-General".

- (9) Section 81 (5)—

- 25 Omit "permanent head", insert instead "Director-General".

- (10) Section 82—

Omit "permanent head", insert instead "Director-General".

- (11) Section 83 (1)–(4)—

Omit "permanent head" wherever occurring, insert instead "Director-General".

- 30 (12) Section 84 (1), (2)—

Omit "permanent head" wherever occurring, insert instead "Director-General".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

(13) Section 87—

Omit “permanent head” wherever occurring, insert instead “Director-General”.

(14) Section 109A—

5 Omit “permanent head” wherever occurring, instead instead “Department Head”.

(15) Schedule Two—

Omit so much as amends Act No. 17, 1939.

(16) Schedule Three—

Omit so much as relates to Act No. 17, 1939.

10 **Mental Health Act 1983 No. 178—**

(1) Section 4 (1), definition of “intellectually handicapped person under guardianship”—

Omit the definition, insert instead:

15 “intellectually handicapped person under guardianship” means a person who is being dealt with as an intellectually handicapped person under the provisions of Part IX of the Child Welfare Act 1939;

(2) Section 86 (2) (e)—

Omit the paragraph, insert instead:

20 (e) where the person is an intellectually handicapped person under guardianship of the Minister for Youth and Community Services, that Minister.

(3) Section 108 (2) (c)—

Omit the paragraph, insert instead:

25 (c) where the patient is an intellectually handicapped person under guardianship of the Minister for Youth and Community Services, that Minister consents to the application.

Miscellaneous Acts (Administrative Changes) Amendment Act 1975 No. 65—

(1) (a) Section 2 (1)—

Omit “, 8”.

30 (b) Section 2 (2)—

Omit “, 7, 12”.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

(2) Section 8—

Omit the section.

Private Health Establishments Act 1982 No. 130—

(1) Long title—

- 5 Omit “, nursing homes and certain residential centres for handicapped persons”, insert instead “and nursing homes”.

(2) Section 3—

Omit the section.

(3) (a) Section 4 (1), definition of “establishment” —

- 10 Omit “, nursing home or residential centre for handicapped persons”, insert instead “or nursing home”.

(b) Section 4 (1), definition of “residential centre for handicapped persons” —

Omit the definition.

(4) Part II, heading—

- 15 Omit “, NURSING HOMES AND CERTAIN RESIDENTIAL CENTRES FOR HANDICAPPED PERSONS”, insert instead “AND NURSING HOMES”.

(5) Section 6 (3)—

Omit the subsection.

20 (6) Section 24—

Omit the section.

(7) Section 28 (1)—

Omit the subsection.

(8) Section 30 (1)—

- 25 Omit the subsection.

(9) Section 31—

Omit “or residential centre for handicapped persons”.

(10) Section 32 (1)—

Omit the subsection.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

- (11) Section 35, definition of “establishment” —

Omit the definition.

- (12) Schedule 3, clause 6—

Omit the clause.

5 Prostitution Act 1979 No. 71—

Section 5 (2)—

Omit “not being a child within the meaning of the Community Welfare Act. 1982.”, insert instead “who is of or above the age of 18 years and”.

Protected Estates Act 1983 No. 179—

- 10 Section 34 (2)—

Omit the subsection.

Public Finance and Audit Act 1983 No. 152—

Schedule 2—

Insert, in appropriate alphabetical order:

- 15 Home Care Service of New South Wales.

Registration of Births, Deaths and Marriages Act 1973 No. 87—

Sections 15 (c) (ii), (e), 46 (1) (a), (2)—

Omit “permanent head” wherever occurring, insert instead “Department Head”.

20 Youth and Community Services Act 1973 No. 90—

- (1) Section 2A—

Omit the section.

- (2) Section 3, definition of “Director-General” —

Omit the definition of “Director”, insert instead:

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

- (3) Section 3A (4) (a)—

Omit “Director”, insert instead “Director-General”.

- (4) Part II—

- 30 Omit the Part.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*
 FURTHER AMENDMENTS—*continued*

(5) Sections 18, 19, 24, 26, 31, 34—

Omit "Director" wherever occurring, insert instead "Director-General".

(6) Sections 19 (6) (b), 24 (5)—

Omit "Director's" wherever occurring, insert instead "Director-General's".

5 (7) Section 33—

Omit the section.

SCHEDULE 5

(Sec. 9)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

10

PART 1

PRELIMINARY

Interpretation

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

15 "the 1987 Community Welfare legislation" means this Act and the following Acts:

Community Welfare Act 1987;

Children's Court Act 1987;

Children (Care and Protection) Act 1987;

Children (Criminal Proceedings) Act 1987;

20 Children (Community Service Orders) Act 1987;

Children (Detention Centres) Act 1987.

(2) Except in so far as the context or subject-matter otherwise indicates or requires, an expression used in a provision of this Schedule has the same meaning as it has in the relevant provisions of the 1987 Community Welfare legislation relating to the subject-matter of that provision.

25

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Savings relating to repealed enactments

2. The repeal by this Act of any enactment does not affect—
- (a) the proof of any past act or thing;
 - (b) any duty, obligation, liability, benefit, privilege or right saved by the operation of the enactment; or
 - (c) any amendment or validation made by the enactment.

Interpretation Act 1897

3. The savings contained in this Schedule do not limit any saving in the Interpretation Act 1897.

10

PART 2

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—CHILD WELFARE
ACT 1939

Pending proceedings in courts with respect to children and young persons

- 15 4. (1) Any proceedings with respect to a child or young person within the meaning of the Child Welfare Act 1939 (whether or not under that Act) that were pending in a court immediately before the appointed day may be continued and completed, and any order may be made in those proceedings and shall, subject to this Part, be given effect to, as if the 1987 Community Welfare legislation had not been enacted.
- 20 (2) The provisions of this Part apply to and in respect of any order made or any thing done by a court in any proceedings referred to in subclause (1) as if the order had been made or the thing done immediately before the appointed day.
- (3) In this clause, “the appointed day” means the day appointed and notified under—
- (a) section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 5 of that Act;
 - 25 (b) section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 2 of that Act; or
 - (c) section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 3 of that Act,

whichever is appropriate to the proceedings referred to in subclause (1).

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Boarded-out wards or adopted boarders**

5. (1) A ward under the Child Welfare Act 1939 who, immediately before the appointed day, was a person boarded-out under section 23 (1) of that Act or was an adopted boarder under that Act shall, on and from that day, be deemed—

- 5 (a) to have been placed, under section 91 (1) (d) of the Children (Care and Protection) Act 1987, in the custody of a person approved by the Minister, being the person with whom the ward, immediately before that day, was a person so boarded-out or with whom the adopted boarder, immediately before that day, remained by the authority of the Minister, as the case may be; and
- 10 (b) to have been so placed on the same conditions as those which applied in respect of the ward immediately before the appointed day.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

15 Wards

6. (1) A person who, immediately before the appointed day—

- (a) was a ward under the Child Welfare Act 1939 otherwise than by reason of having been committed to an institution under that Act; or
- (b) was, under that Act, a person—
- 20 (i) committed to the care of the Minister to be dealt with as a ward admitted to State control; and
- (ii) not absolutely discharged from the supervision and control of the Minister,

shall be deemed to be a ward within the meaning of the Children (Care and Protection) Act 1987.

25 (2) Where—

- (a) before the appointed day a person became a ward under section 139A of the Child Welfare Act 1939; and
- (b) the person was a ward immediately before that day,
- then, if at the expiration of the period applicable to the person under section 139A (2) of the Child Welfare Act 1939 the person is a ward, the person shall, notwithstanding any other provision of the Children (Care and Protection) Act 1987, cease to be a ward upon the expiration of that period.
- 30

(3) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

35

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Licences to control child care centres**

7. (1) Subject to subclause (2), where a licence authorising a person to control a child care centre on any premises, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

5 (a) the licence shall be deemed—

(i) to be a licence for a child care service, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

(ii) subject to that Act, to be in force for a period of 2 years from the appointed day;

10 (b) the licence referred to in paragraph (a) (i) shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day; and

15 (c) the person authorised by a licence, granted under section 29 of the Child Welfare Act 1939, to conduct a child care centre on those premises shall be deemed to be the authorised supervisor under the licence referred to in paragraph (a) (i).

20 (2) Where a licence, being a licence of the kind firstmentioned in subclause (1), was granted to a person as referred to in that subclause and authorised the person to control a child care centre, being a child care centre conducted in the home of another person for not more than 4 children under the age of 6 years (including any children under the age of 6 years of that other person)—

(a) the licence shall be deemed to have been granted—

25 (i) except as provided by subparagraph (ii), to the employer of the person to whom it was granted; or

(ii) where the person to whom it was granted controls the child care centre otherwise than as an employee, to such person as the Director-General determines; and

30 (b) the person to whom the licence was granted shall be deemed to be the authorised supervisor under the licence referred to in subclause (1) (a) (i).

(3) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 1 of Part 3 of that Act.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Permits to control child care centres**

8. (1) Where a permit authorising a person to control a child care centre on any premises, granted under section 32 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

- 5 (a) the permit shall be deemed—
 - (i) to be a licence for a child care service, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and
 - (ii) subject to that Act, to be in force until the expiration of the period for which the permit was granted;
- 10 (b) the licence shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the permit was subject immediately before the appointed day; and
- 15 (c) the person authorised by a permit, granted under section 32 of the Child Welfare Act 1939, to conduct a child care centre on those premises shall be deemed to be the authorised supervisor under the licence.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 1 of Part 3 of that Act.

20 Licences to control children’s depots, homes or hostels

9. (1) Where a licence authorising a person to control a children’s depot, home or hostel on any premises, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

- (a) the licence shall be deemed—
 - 25 (i) to be a licence for a residential child care centre, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and
 - (ii) subject to that Act, to be in force for a period of 3 years from the appointed day;
- 30 (b) the licence referred to in paragraph (a) (i) shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day; and
- 35 (c) the person authorised by a licence, granted under section 29 of the Child Welfare Act 1939, to conduct a children’s depot, home or hostel on those premises shall be deemed to be the licensed manager under the licence referred to in paragraph (a) (i).

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 2 of Part 3 of that Act.

Permits to control children’s depots, homes or hostels

5 10. (1) Where a permit authorising a person to control a children’s depot, home or hostel on any premises, granted under section 32 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

(a) the permit shall be deemed—

10 (i) to be a licence for a residential child care centre, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

(ii) subject to that Act, to be in force until the expiration of the period for which the permit was granted;

15 (b) the licence shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the permit was subject immediately before the appointed day; and

(c) the person authorised by a permit, granted under section 32 of the Child Welfare Act 1939, to conduct a children’s depot, home or hostel on those premises shall be deemed to be the licensed manager under the licence.

20 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 2 of Part 3 of that Act.

Licences to conduct and control private foster homes for children

25 11. (1) Where a licence authorising a person to conduct and control a private foster home, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

(a) the licence shall be deemed to be a fostering authority, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

30 (b) the fostering authority shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence was subject immediately before the appointed day.

35 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 4 of Part 3 of that Act.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Orders of discharge of persons in institutions**

12. (1) An order of discharge made under section 54 (4) of the Child Welfare Act 1939 and in force immediately before the appointed day shall, on and from that day, be deemed to be a parole order made by the Parole Board under section 27 (2) of the
5 Probation and Parole Act 1983.

(2) Subject to the Probation and Parole Act 1983, a parole order referred to in subclause (1) shall—

- (a) remain in force for the period; and
- (b) be subject to the conditions,

10 specified in the discharge order deemed, by that subclause, to be the parole order.

(3) For the purposes of the Probation and Parole Act 1983, discharge from an institution under section 54 (4) of the Child Welfare Act 1939 shall be deemed to be release, on parole, from a prison.

(4) In this clause, “the appointed day” means the day appointed and notified under
15 section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Punishment for misbehaving in institutions

13. (1) Where any punishment was imposed on a person under section 56 (3) or 57 (2) (a) or (b) of the Child Welfare Act 1939 before the appointed day but had not been
20 completely served before that day, that person is liable to serve, for the unexpired period of the punishment, such of the punishments specified in section 21 (1) of the Children (Detention Centres) Act 1987 as is determined by the superintendent of the detention centre in which that person is for the time being detained in accordance with directions given to the superintendent by the Director-General.

25 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Licences to take part in public entertainments

14. (1) Where a licence authorising a child to be employed in any place or premises
30 mentioned in section 68 (1) (a) of the Child Welfare Act 1939, granted under section 69 of that Act, was in force immediately before the appointed day, the licence shall, on and from that day, be deemed—

- (a) to be a children’s employment licence, within the meaning of the Children (Care and Protection) Act 1987, granted in respect of that child;
- 35 (b) subject to that Act, to be in force until the expiration of the period for which the licence first mentioned in this subclause was granted; and

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (c) to be subject to the same conditions, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day.

- (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 4 of that Act.

Powers exercised by the court under section 82 of the Child Welfare Act 1939

15. (1) Where a person was, immediately before the appointed day—
- 10 (a) a person subject to probation by virtue of section 82 (1) (b) of the Child Welfare Act 1939 or a person committed to an institution by virtue of section 82 (1) (e) of that Act, the person shall, on and from that day, be deemed, subject to the Children (Care and Protection) Act 1987, to have been placed, by virtue of an order made under section 72 (1) (c) (i) of the Children (Care and Protection) Act 1987, under the supervision of an officer for the period expiring—
- 15 (i) upon the expiry of the period for which the person was released on probation under section 82 (1) (b) of the Child Welfare Act 1939;
- (ii) upon the expiry of 2 years from when the order was made; or
- (iii) upon the person’s attaining the age of 18 years,
- whichever first occurs;
- 20 (b) a person committed to the care of another person under section 82 (1) (c) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed to be a person placed, under section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987, in the custody of that other person for the period expiring—
- (i) upon the expiry of the period specified by the court making the committal;
- 25 (ii) upon the expiry of 2 years from when the person was so committed; or
- (iii) upon the person’s attaining the age of 18 years,
- whichever first occurs, and that other person shall, for the purposes of Part 5 of the Children (Care and Protection) Act 1987, be deemed to have given undertakings to observe the conditions to which that other person was,
- 30 immediately before the appointed day, subject by virtue of section 82 (1) (c) of the Child Welfare Act 1939; or
- (c) a person in the care of the Minister by virtue of section 82 (1) (d) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Care and Protection) Act 1987, to be a ward by virtue of an order made under section 72 (1) (c) (iii) of the Children (Care and Protection) Act 1987 for the period expiring—
- 35 (i) upon the expiry of 2 years from when the order was made; or

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(ii) upon the person's attaining the age of 18 years,

whichever first occurs.

(2) Where a person has, under section 82 (2) of the Child Welfare Act 1939, undertaken, before the appointed day, to observe any conditions in relation to a child,
5 that undertaking shall, on and from that day, be deemed—

- (a) where the undertaking has not expired, to be, on and from that day, an undertaking accepted under section 72 (1) (b) (i) of the Children (Care and Protection) Act 1987;
- 10 (b) where it was given otherwise than by a person responsible for the child, to have been given by a person responsible for the child; and
- (c) to be in force for the period expiring upon the expiry of the period determined, under section 82 (2) of the Child Welfare Act 1939, by the court when releasing the child under that subsection.

(3) In this clause, "the appointed day" means the day appointed and notified under
15 section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 5 of that Act.

Powers exercised by the court under section 83 of the Child Welfare Act 1939

16. (1) Where, immediately before the appointed day—
- 20 (a) a person was subject to probation by virtue of section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Criminal Proceedings) Act 1987, to be subject, by virtue of section 33 (1) (e) of the Children (Criminal Proceedings) Act 1987, to probation on the same conditions, if any, as those imposed by or under section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939 and for the period expiring—
 - 25 (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the period for which the person was released on probation under section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939;
 - (ii) where the period for which the person was so released exceeds 12 months and, on the appointed day, less than 12 months have elapsed—upon the
30 expiry of 12 months from the date of the release; or
 - (iii) where the period for which the person was so released exceeds 12 months and, on the appointed day, 12 months or more have elapsed—upon the appointed day;

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- 5 (b) a person was a person committed to the care of another person under section 83 (1) (b) or (2) (b) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Criminal Proceedings) Act 1987, to be subject, by virtue of section 33 (1) (e) of the Children (Criminal Proceedings) Act 1987, to probation on the same conditions, if any, as those imposed under section 83 (1) (b) or (2) (b) of the Child Welfare Act 1939, upon the person's being so committed, and, in addition, on the condition that the person reside with the person into whose care the person was so committed, and to be so subject for the period expiring—
- 10 (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the period for which the person was so committed;
- (ii) where the period for which the person was so committed exceeds 12 months and, on the appointed day, less than 12 months have elapsed—upon the expiry of 12 months from the date of the committal; or
- 15 (iii) where the period for which the person was so committed exceeds 12 months and, on the appointed day, 12 months or more have elapsed—upon the appointed day;
- 20 (c) a person was a person committed to an institution under section 83 (1) (c) or (2) (d) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed to be a person subject to control pursuant to an order made under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 expiring—
- (i) except as provided by subparagraph (ii), (iii), (iv) or (v)—upon the expiry of the term specified by the court making the committal;
- 25 (ii) where that term exceeds 2 years and the person committed has, on the appointed day, served less than 2 years of that term—upon the expiry of 2 years from the date of the committal;
- (iii) where that term exceeds 2 years and the person committed has, on the appointed day, served 2 or more years of that term—upon the appointed day;
- 30 (iv) where the person was committed generally and has, on the appointed day, served less than 1 year—upon the expiry of 1 year from the date of the committal; or
- (v) where the person was committed generally and has, on the appointed day, served 1 year or more—upon the appointed day; and

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(d) any recognizance entered into pursuant to section 83 (2) (e) or (3) (c) of the Child Welfare Act 1939 was in force, it shall, on and from that day, be deemed to be a recognizance entered into pursuant to section 33 (1) (b) of the Children (Criminal Proceedings) Act 1987 expiring—

- 5 (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the term specified by the court which required the recognizance to be entered into;
- (ii) where that term exceeds 12 months and the recognizance has enured for less than 12 months of that term—upon the expiry of 12 months from the date the recognizance was entered into; or
- 10 (iii) where that term exceeds 12 months and the recognizance has, on the appointed day, enured for 12 months or more of that term—upon the appointed day.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the
15 commencement of Part 3 of that Act.

Directions under section 87 (1A) of the Child Welfare Act 1939

17. (1) A direction given under section 87 (1A) of the Child Welfare Act 1939 in force on the appointed day that a person be detained in a shelter shall, on and from that day, be deemed, where the period specified in the sentence to which the direction applies
20 has not expired, to be an order under section 19 of the Children (Criminal Proceedings) Act 1987.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 2 of that Act.

25 Persons detained in shelters under section 92 of the Child Welfare Act 1939

18. (1) A person detained, pursuant to section 92 of the Child Welfare Act 1939, in a shelter on the appointed day may continue to be so detained but for not more than 14 days commencing on that day.

(2) In this clause, “the appointed day” means the day appointed and notified under
30 section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Persons transferred to institutions under section 94 of the Child Welfare Act 1939

19. (1) A person transferred, pursuant to section 94 of the Child Welfare Act 1939, from a prison to an institution before the appointed day and detained in an institution
35 on that day shall, on and from that day, be deemed to be a person transferred to a detention centre pursuant to section 10 of the Children (Detention Centres) Act 1987.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Persons detained in shelters under section 135 of the Child Welfare Act 1939

20. (1) A person detained, pursuant to section 135 of the Child Welfare Act 1939, in a shelter on the appointed day shall be forthwith discharged from the shelter.

5 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) in relation to the commencement of section 3 in its application to section 135 of the Child Welfare Act 1939.

Orders under section 136 of the Child Welfare Act 1939

21. (1) An order in force under section 136 of the Child Welfare Act 1939 immediately before the appointed day shall cease to have effect on that day.

10 (2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) in relation to the commencement of section 3 in its application to section 136 of the Child Welfare Act 1939.

Interstate wards

15 22. (1) A person who, immediately before the appointed day, was an interstate ward referred to in section 139A of the Child Welfare Act 1939 shall, on and from that day, be deemed to be an interstate ward within the meaning of section 95 of the Children (Care and Protection) Act 1987.

20 (2) Any arrangements referred to in section 139A (3) (a) of the Child Welfare Act 1939 that were in force immediately before the appointed day shall, on and from that day, be deemed to be arrangements referred to in section 95 (2) (a) of the Children (Care and Protection) Act 1987.

(3) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

25

PART 3

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—MAINTENANCE ACT
1964

Interpretation

23. In this Part—

30 “prescribed Local Court” means the Local Court held at 323 Castlereagh Street, Sydney;

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

“the appointed day” means the day appointed and notified under section 2 (5) in relation to the commencement of the provisions of Schedule 3 relating to the Maintenance Act 1964.

Pending proceedings under Maintenance Act 1964

- 5 24. (1) Any proceedings commenced under the Maintenance Act 1964 and pending in a court immediately before the appointed day may be continued and completed, and any order may be made in those proceedings and shall, subject to this Part, be given effect to, as if this Act had not been enacted.

- 10 (2) The provisions of this Part apply to and in respect of any order made or any thing done by a court in any proceedings referred to in subclause (1) as if the order had been made or the thing done immediately before the appointed day.

Savings—Maintenance Act 1964

- 15 25. (1) Any order made, registered or confirmed or deemed to have been made, registered or confirmed under the Maintenance Act 1964 and in force immediately before the appointed day shall, on and from that day, be deemed—

(a) to have been made, registered or confirmed, as the case may be, under that Act, as amended by this Act, and may be enforced, discharged, suspended, varied or annulled or otherwise dealt with as if it had been so made, registered or confirmed; and

- 20 (b) to have been made—

(i) where there is a Local Court at the place where the order was made, by that Local Court; or

- 25 (ii) where there is no Local Court at the place where the order was made, by the Local Court nearest by the most practicable route to the place where the order was made.

(2) All records with respect to an order referred to in subclause (1) shall, as soon as practicable after the appointed day, be transferred to, and become records of, the Local Court by which the order is, by subclause (1) (b), to be deemed to have been made.

- 30 (3) Any overseas order, within the meaning of Division 1 of Part IV of the Maintenance Act 1964, registered immediately before the appointed day under Division 3 of that Part shall, on and from that day, be deemed to be an overseas order registered under Division 3 of that Part, as amended by this Act, in the prescribed Local Court.

- 35 (4) All records with respect to any overseas order referred to in subclause (3) shall, as soon as practicable after the appointed day, be transferred to, and become records of, the prescribed Local Court.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

PART 4

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—INFANTS' CUSTODY
AND SETTLEMENTS ACT 1899**Maintenance orders under Infants' Custody and Settlements Act 1899**

- 5 26. (1) Any order for the payment of a weekly or other periodical sum made by a children's court under the Infants' Custody and Settlements Act 1899 in the exercise of the powers and authorities conferred by section 12 (2) of the Child Welfare Act 1939 and in force immediately before the appointed day shall, on and from that day, be deemed to be an order for the payment of such a sum made by a Local Court under the
- 10 firstmentioned Act.

(2) In this clause, "the appointed day" means the day appointed and notified under section 2 (5) in relation to the commencement of the provisions of Schedule 3 relating to the Infants' Custody and Settlements Act 1899.

PART 5

15 GENERAL

References in other Acts, etc.

27. (1) On and from the appointed day, a reference in any Act (whether enacted before or after the date of assent to this Act) or in any other instrument or document, whether of the same or of a different kind—
- 20 (a) to the Child Welfare Act 1939;
- (b) to the Community Welfare Act 1982; or
- (c) to any provision of either of those Acts,
- extends to include a reference—
- (d) to the Community Welfare Act 1987;
- 25 (e) to the Children's Court Act 1987;
- (f) to the Children (Care and Protection) Act 1987;
- (g) to the Children (Criminal Proceedings) Act 1987;
- (h) to the Children (Community Service Orders) Act 1987;
- (i) to the Children (Detention Centres) Act 1987; or

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(j) to the corresponding provision of the relevant Act,
as the case requires.

(2) In this clause, a reference to the appointed day—

- 5 (a) in relation to a reference to the Child Welfare Act 1939—is a reference to the day on which the last of the provisions of that Act is repealed by this Act;
- (b) in relation to a reference to a provision of the Child Welfare Act 1939—is a reference to the day on which that provision is repealed by this Act; or
- (c) in relation to the Community Welfare Act 1982 or a provision of that Act—is a reference to the date of assent to this Act.

10 Regulations

28. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the 1987 Community Welfare legislation.

15 (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on and from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- 20 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication in the Gazette.

25 (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

**MISCELLANEOUS ACTS (COMMUNITY WELFARE)
REPEAL AND AMENDMENT ACT 1987 No. 58**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Repeal of Act No. 17, 1939
4. Repeal of Act No. 76, 1982
5. Repeals consequent upon the repeal of Act No. 17, 1939, and certain other repeals
6. Repeals consequent upon the repeal of Act No. 76, 1982
7. Amendments
8. Further amendments
9. Savings, transitional and other provisions

SCHEDULE 1—REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND CERTAIN OTHER REPEALS

SCHEDULE 2—REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 76, 1982

SCHEDULE 3—AMENDMENTS

SCHEDULE 4—FURTHER AMENDMENTS

SCHEDULE 5—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

**MISCELLANEOUS ACTS (COMMUNITY WELFARE) REPEAL AND
AMENDMENT ACT 1987 No. 58**

NEW SOUTH WALES



Act No. 58, 1987

An Act to repeal certain enactments and to amend certain other enactments, and to enact savings, transitional and other provisions, consequent upon the enactment of the Community Welfare Act 1987, the Children's Court Act 1987, the Children (Care and Protection) Act 1987, the Children (Criminal Proceedings) Act 1987, the Children (Community Service Orders) Act 1987 and the Children (Detention Centres) Act 1987. [Assented to 29 May 1987]

Miscellaneous Acts (Community Welfare) Repeal and Amendment 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:

Short title

1. This Act may be cited as the "Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987".

Commencement

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

(2) Section 3, in its application to a provision of the Child Welfare Act 1939, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(3) Section 7, in its application to a provision of Schedule 3, shall commence on the day on which the provision commences.

(4) Section 8, in its application to a provision of Schedule 4, shall commence on the day on which the provision commences.

(5) Except as provided by subsection (6), the provisions of Schedule 3 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(6) Item (2) of the provisions of Schedule 3 relating to the Prisoners (Interstate Transfer) Act 1982 shall, if the day on which item (1) of those provisions commences is earlier than the day appointed and notified under section 2 (2) of the Prisoners (Interstate Transfer) Amendment Act 1986, commence on the day so appointed and notified.

(7) Item (5) of the provisions of Schedule 4 relating to the Adoption of Children Act 1965 shall commence—

(a) on the date of assent to this Act; or

(b) on the respective day or days on which sections 6E, 6K and 6R (as to be inserted by the Adoption of Children (Amendment) Act 1980 and, in the case of sections 6E and 6R, as amended by the Adoption of Children (Amendment) Act 1982) of the Adoption of Children Act 1965 commence, as the case requires,

whichever is the later.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

(8) Item (1) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of the Education and Public Instruction Act 1987,

whichever is the later.

(9) Item (2) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of the Private Health Establishments Act 1982,

whichever is the later.

(10) Item (3)(a) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of Division 1 of Part II of the Mental Health Act 1983,

whichever is the later.

(11) Item (3)(b) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of Division 2 of Part II of the Mental Health Act 1983,

whichever is the later.

(12) Item (4) of the provisions of Schedule 4 relating to the Children (Care and Protection) Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of the Interpretation Act 1987,

whichever is the later.

Repeal of Act No. 17, 1939

3. The Child Welfare Act 1939 is repealed.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

Repeal of Act No. 76, 1982

4. The Community Welfare Act 1982 is repealed.

Repeals consequent upon the repeal of Act No. 17, 1939, and certain other repeals

5. Each Act specified in Schedule 1 is, to the extent indicated in that Schedule, repealed.

Repeals consequent upon the repeal of Act No. 76, 1982

6. Each Act specified in Schedule 2 is, to the extent indicated in that Schedule, repealed.

Amendments

7. Each Act specified in Schedule 3 is amended in the manner set forth in that Schedule.

Further amendments

8. Each Act specified in Schedule 4 is amended in the manner set forth in that Schedule.

Savings, transitional and other provisions

9. Schedule 5 has effect.

SCHEDULE 1

(Sec. 5)

REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND CERTAIN OTHER REPEALS

Statute Law Revision Act 1937 No. 35—so much of the Second Schedule as amends Act No. 51, 1916
 Government Relief Administration (Amendment) Act 1940 No. 33—the whole Act
 Child Welfare (Amendment) Act 1955 No. 14—the whole Act
 Child Welfare (Amendment) Act 1956 No. 9—the whole Act
 Deserted Wives and Children (Amendment) Act 1960 No. 21—section 1 (4) and (5) and sections 3, 4 and 7
 Child Welfare (Amendment) Act 1961 No. 15—the whole Act
 Child Welfare (Amendment) Act 1966 No. 11—the whole Act

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 1—*continued*

REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 17, 1939, AND
CERTAIN OTHER REPEALS—*continued*

- Child Welfare (Amendment) Act 1967 No. 27—the whole Act
 Child Welfare (Amendment) Act 1969 No. 27—the whole Act
 Metric Conversion Act 1974 No. 51—so much of the Schedule as amends Act No. 51, 1916
 Youth and Community Services (Amendment) Act 1976 No. 44—the whole Act
 Statute Law Revision Act 1976 No. 63—so much of Schedule 1 as amends Act No. 24, 1930
 Public Hospitals (Amendment) Act 1976 No. 95—so much of Schedule 5 as amends Act No. 24, 1930
 Children (Equality of Status) Act 1976 No. 97—so much of Schedule 1 as amends Act No. 17, 1939
 Notice of Action and Other Privileges Abolition Act 1977 No. 19—so much of Schedule 1 as amends Act No. 17, 1939
 Child Welfare (Amendment) Act 1977 No. 20—the whole Act
 Maintenance (Amendment) Act 1977 No. 43—so much of section 3 as relates to Schedules 3, 5 and 6, sections 5, 7 and 8 and Schedules 3, 5 and 6
 Child Welfare (Further Amendment) Act 1977 No. 100—the whole Act
 Child Welfare (Bail) Amendment Act 1978 No. 163—the whole Act
 Youth and Community Services (Amendment) Act 1979 No. 130—the whole Act
 Child Welfare (Amendment) Act 1979 No. 131—the whole Act
 Child Welfare (Coroners) Amendment Act 1980 No. 28—the whole Act
 Child Welfare (Amendment) Act 1981 No. 43—the whole Act
 Miscellaneous Acts (Local Courts) Amendment Act 1982 No. 168—so much of Schedule 1 as amends Act No. 17, 1939
 Child Welfare (Probation and Parole) Amendment Act 1983 No. 195—the whole Act
 Child Welfare (Criminal Injuries Compensation) Amendment Act 1984 No. 72—the whole Act
 Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 71, 1979
 Miscellaneous Acts (Search Warrants) Amendment Act 1985 No. 38—so much of Schedule 1 as amends Act No. 17, 1939
 Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985 No. 59—so much of Schedule 1 as amends Act No. 17, 1939
 Miscellaneous Acts (Annual Reports—Departments) Amendment Act 1985 No. 157—so much of Schedule 1 as amends Act No. 17, 1939
 Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Act 1985 No. 227—so much of Schedule 1 as amends Act No. 17, 1939
 Miscellaneous Acts (Area Health Services) Amendment Act 1986 No. 53—so much of Schedule 1 as amends Act No. 17, 1939 and Act No. 90, 1973
-

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 2

(Sec. 6)

REPEALS CONSEQUENT UPON THE REPEAL OF ACT No. 76, 1982

- Adoption of Children (Community Welfare) Amendment Act 1982 No. 77—the whole Act
- Bail (Community Welfare) Amendment Act 1982 No. 78—the whole Act
- Community Service Orders (Community Welfare) Amendment Act 1982 No. 79—the whole Act
- Coroners (Community Welfare) Amendment Act 1982 No. 80—the whole Act
- Crimes (Community Welfare) Amendment Act 1982 No. 81—the whole Act
- Defamation (Community Welfare) Amendment Act 1982 No. 82—the whole Act
- Infants' Custody and Settlements (Community Welfare) Amendment Act 1982 No. 83—the whole Act
- Justices (Community Welfare) Amendment Act 1982 No. 84—the whole Act
- Land and Environment Court (Community Welfare) Amendment Act 1982 No. 85—the whole Act
- Maintenance (Community Welfare) Amendment Act 1982 No. 86—the whole Act
- Mental Health (Community Welfare) Amendment Act 1982 No. 87—the whole Act
- Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1982 No. 88—the whole Act
- Public Instruction (Community Welfare) Amendment Act 1982 No. 90—the whole Act
- Statutory and Other Offices Remuneration (Children's Panel Council) Amendment Act 1982 No. 91—the whole Act
- Community Welfare (Private Health Establishments) Amendment Act 1982 No. 132—the whole Act
- Miscellaneous Acts (Local Courts) Amendment Act 1982 No. 168—so much of Schedule 2 as amends Act No. 76, 1982 and Act No. 78, 1982
- Community Welfare (Amendment) Act 1983 No. 2—the whole Act
- Miscellaneous Acts (Community Welfare) Amendment Act 1983 No. 3—the whole Act
- Statutory and Other Offices Remuneration (Children's Boards of Review) Amendment Act 1983 No. 4—the whole Act
- Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1983 No. 181—so much of Schedule 1 as amends Act No. 87, 1982 and Act No. 3, 1983
- Crimes (Compensation) Amendment Act 1984 No. 70—section 4
- Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 76, 1982 and Act No. 82, 1982
- Miscellaneous Acts (Search Warrants) Amendment Act 1985 No. 38—so much of Schedule 1 as amends Act No. 76, 1982
- Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985 No. 59—so much of Schedule 1 as amends Act No. 76, 1982
- Community Welfare (Child Assault) Amendment Act 1985 No. 150—the whole Act
- Miscellaneous Acts (Drug Misuse and Trafficking) Amendment Act 1985 No. 227—so much of Schedule 1 as amends Act No. 76, 1982
- Statute Law (Miscellaneous Provisions) Act 1985 No. 231—so much of Schedule 31 as amends Act No. 88, 1982

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3

(Sec. 7)

AMENDMENTS

Adoption of Children Act 1965 No. 23—

(1) Section 6, definition of "Foster parent" —

Omit the definition, insert instead:

"Foster parent" means any person—

- (a) who has the care of a child in accordance with a fostering authority held by the person under the Children (Care and Protection) Act 1987;
- (b) who has the care of a child that has been placed in the care of the person by, or with the written approval of, the Minister administering the Children (Care and Protection) Act 1987 or the Director-General; or
- (c) who has the care of a child that has been placed in the care of the person by an authorised private fostering agency within the meaning of the Children (Care and Protection) Act 1987.

(2) Section 18 (1) (b) (ii)—

Omit the subparagraph, insert instead:

- (ii) had, as a ward within the meaning of the Child Welfare Act 1939 or the Children (Care and Protection) Act 1987, been in the care or custody of the applicant or applicants or with the applicant and a deceased spouse of the applicant.

(3) Section 24—

Omit "an order placing the child in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as a ward admitted to State control", insert instead " , where the child has not attained the age of 18 years, an order declaring the child to be a ward under the Children (Care and Protection) Act 1987".

(4) Section 31A (2)—

Omit the subsection, insert instead:

- (2) Where, in relation to a child referred to in section 26 (3) who is a ward within the meaning of the Children (Care and Protection) Act 1987, a consent to the adoption of the child is given by the mother of the child, the Director-General shall make the inquiries referred to in subsection (1) in order to ascertain whether any person, as at the date on which the consent is given, is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(5) (a) Section 34 (2) (a), (2D), (5) (d)—

Omit "Child Welfare Act, 1939" wherever occurring, insert instead "Children (Care and Protection) Act 1987".

(b) Section 34 (4)—

Omit the subsection, insert instead:

(4) Without limiting the generality of subsection (3), an order under that subsection may, where the child has not attained the age of 18 years, declare the child to be a ward under the Children (Care and Protection) Act 1987, or order that the child remain under the guardianship of the Director-General for a further period of one year.

(6) Section 35 (1) (d)—

Omit "section 9 of the Child Welfare Act, 1939", insert instead "section 90 of the Children (Care and Protection) Act 1987".

(7) Section 43 (2)—

Omit "an order placing the child in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as a ward admitted to State control", insert instead "where the child has not attained the age of 18 years, an order declaring the child to be a ward under the Children (Care and Protection) Act 1987".

Bail Act 1978 No. 161—

(1) (a) Section 4 (1), definition of "conviction" —

Omit "83 (3) of the Child Welfare Act, 1939", insert instead "33 (1) (a) of the Children (Criminal Proceedings) Act 1987".

(b) Section 4 (1), definition of "Local Court" —

Omit "a children's court under the Child Welfare Act, 1939", insert instead "the Children's Court".

(c) Section 4 (1), definition of "magistrate" —

Omit "a special magistrate under the Child Welfare Act, 1939", insert instead "a member of the Children's Court".

(d) Section 4 (2) (d)—

Omit "and".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(e) Section 4 (2) (e), (f)—

At the end of section 4 (2) (e), insert:

; and

- (f) a person who may appear or be brought before a court pursuant to section 21 (1) (d) or 26 (1) (c) of the Children (Community Service Orders) Act 1987.

(f) Section 4 (6)—

Omit the subsection, insert instead:

- (6) A reference in this Act to a prison includes, in the case of a person who is under the age of 18 years, a reference to a detention centre within the meaning of the Children (Detention Centres) Act 1987.

(2) (a) Section 6 (g) (ii)—

Omit “and”.

(b) Section 6 (g1)–(g3)—

After section 6 (g), insert:

- (g1) the period during which an application for revocation, extension or amendment of a community service order (within the meaning of the Community Service Orders Act 1979) or a children’s community service order (within the meaning of the Children (Community Service Orders) Act 1987) is pending;
- (g2) the period between a person’s being convicted of an offence under section 23 (1) of the Community Service Orders Act 1979 and the person’s appearing, pursuant to that Act, before the court that made the community service order, within the meaning of that Act, to which the person is subject;
- (g3) the period between a person’s being found guilty of an offence under section 24 (1) of the Children (Community Service Orders) Act 1987 and the person’s appearing, pursuant to that Act, before the court that made the children’s community service order, within the meaning of that Act, to which the person is subject; and

(3) (a) Section 8 (1) (a)—

Omit “and”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

- (b) Section 8 (1) (b), (c)—

At the end of section 8 (1) (b), insert:

; and

- (c) all offences (whether or not of a kind referred to in paragraph (a) or (b)) in respect of which a person is an accused person by virtue of section 4 (2) (e) or (f),

- (4) (a) Section 16 (d)—

Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the Children (Criminal Proceedings) Act 1987”.

- (b) Section 16 (d)—

Omit “children’s court”, insert instead “Children’s Court”.

- (5) (a) Section 24 (5)—

Omit “a children’s court”, insert instead “the Children’s Court”.

- (b) Section 24 (5)—

Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the Children (Criminal Proceedings) Act 1987”.

- (6) (a) Section 26 (1) (g)—

Omit “87 (2) (a) of the Child Welfare Act, 1939”, insert instead “20 (1) of the Children (Criminal Proceedings) Act 1987”.

- (b) Section 26 (1) (g)—

Omit “children’s court”, insert instead “Children’s Court”.

- (7) Section 32 (4), (5)—

After section 32 (3), insert:

(4) In having regard to the details of residence, as referred to in subsection (1) (a) (i), of an accused person who is under the age of 18 years, the fact that the person does not reside with a parent or guardian of the person shall be ignored.

(5) The reference in subsection (1) (a) (i) to an accused person’s residence includes a reference to the residential address at which the person may generally be found.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

(8) Section 58 (3A)—

After section 58 (3), insert:

(3A) This section does not apply in relation to an indemnity or an agreement to indemnify given by the Minister administering the Children (Care and Protection) Act 1987 to an officer of the Department of Youth and Community Services against any forfeiture which the officer may incur as a result of entering into any agreement under section 36 for the purpose of fulfilling a condition imposed on the grant of bail to a ward within the meaning of the Children (Care and Protection) Act 1987.

Commonwealth Powers (Family Law—Children) Act 1986 No. 182—

Schedule 1—

Omit “Child Welfare Act 1939”.

Community Service Orders Act 1979 No. 192—

Section 4 (1)—

Omit “Where a person of or over 18 years of age is before a court for sentencing after being convicted of an offence punishable by imprisonment, whether or not it is also punishable by a fine,”, insert instead:

Where a person—

(a) who has committed an offence punishable by imprisonment (whether or not it is also punishable by a fine); and

(b) who—

(i) had attained the age of 18 years when the offence was committed;
or

(ii) had not then attained that age but had attained the age of 21 years when the person was charged before a court with the offence,

is before a court for sentencing after being convicted of the offence,

Coroners Act 1980 No. 27—

(1) Section 13 (3) (h)—

Omit “an institution within the meaning of the Child Welfare Act, 1939”, insert instead “a residential child care centre licensed under the Children (Care and Protection) Act 1987 or a facility within the meaning of that Act or in a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

(2) Section 13 (3) (h)—

Omit “or institution”, insert instead “, residential child care centre, facility or detention centre”.

Crimes Act 1900 No. 40—

(1) Section 19—

Omit “The provisions”, insert instead “Except in the case of murder committed by a person who is under the age of 18 years, the provisions”.

(2) Section 340 (2)—

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

(3) Section 353A (3)—

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

(4) Sections 353AA, 353AB—

After section 353A, insert:

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

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

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

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

(a) to the Children’s Court; or

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

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

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

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

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

Destruction of certain photographs, finger-prints, etc.

353AB. Where a court finds an offence alleged against a child who has had the child's photograph, finger-prints and palm-prints taken in accordance with section 353A (3) or 353AA not proved, the court shall cause to be served on—

- (a) the child;
- (b) where practicable, the parents or guardian of the child; and
- (c) any other person who has the care of the child,

a notice stating that if the child or they so desires or desire, the court will order that the photograph, finger-prints and palm-prints, and all other records (other than the records of the court), relating to the alleged offence be destroyed and the court may make the order accordingly.

(5) Section 556A (1B)—

After section 556A (1A), insert:

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

(6) Section 558 (1A)—

After section 558 (1), insert:

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

Defamation Act 1974 No. 18—

Section 17H—

After section 17G, insert:

Matters arising under the Children (Care and Protection) Act 1987

17H. There is a defence of absolute privilege for the publication of a report made under section 100 (6) of the Children (Care and Protection) Act 1987 by a Board of Review established under that Act.

Fines and Forfeited Recognizances Act 1954 No. 25—

(1) Section 6 (1), (1A)—

Omit "or special magistrate" wherever occurring.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
 AMENDMENTS—*continued*

(2) Section 6 (2) (a)—

Omit "or a children's court holden in either case before a Magistrate or special magistrate", insert instead "constituted by a Magistrate or the Children's Court".

Infants' Custody and Settlements Act 1899 No. 39—

(1) Section 10A (3)—

After "shall" where secondly occurring, insert ", subject to subsections (3A) and (3B).".

(2) Section 10A (3A), (3B)—

After section 10A (3), insert:

(3A) Any order for the payment of a weekly or other periodical sum made by a Local Court in the exercise of the powers and authorities conferred by this Part shall have effect as an order for the payment, at the weekly or other periods stated in the order, of successive amounts of money equal to the sums specified in the order.

(3B) If default is made in the payment of any one or more of the weekly or other periodical sums referred to in subsection (3A), the order for the payment of that sum or the total of those sums then in default for any period not exceeding 6 months may be enforced as if the order were an order for the payment of a sum of money equal to that sum or the total of those sums made under the Local Courts (Civil Claims) Act 1970 by the Local Court which made the order.

(3) Section 10A (5)—

After section 10A (4), insert:

(5) The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to proceedings under this Act in a Local Court in the same way as they apply to criminal proceedings.

Judicial Officers Act 1986 No. 100—

(1) Section 3 (1), definition of "Magistrate"—

Omit "a special magistrate".

(2) Section 3 (1), definition of "Magistrate"—

After "industrial magistrate", insert ", but does not include a member of the Children's Court in his or her capacity as a member of that Court".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
 AMENDMENTS—*continued*

Jury Act 1977 No. 18—

(1) Schedule 1, clause 2 (b)—

Omit “an institution for juvenile offenders”, insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

(2) Schedule 2, clause 4—

Omit “special magistrates”, insert instead “members of the Children’s Court”.

Justices Act 1902 No. 27—

(1) Section 84A—

Before section 85, insert:

Traffic offences committed by children

84A. (1) In this section—

“child”, in relation to a traffic offence, includes a person who was under the age of 18 years when the person committed the offence and was under the age of 21 years when the person was charged before a Justice or Justices with the offence;

“traffic offence” has the same meaning as it has in the Children (Criminal Proceedings) Act 1987.

(2) A Justice or Justices may, in respect of a child found guilty of a traffic offence, deal with the child in accordance with Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987.

(3) For the purpose of dealing with a person in accordance with Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987, a Justice or Justices shall have and may exercise the functions of the Children’s Court under that Division in the same way as if—

(a) the Justice or Justices were the Children’s Court; and

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

(4) A Justice or Justices may not impose a sentence of imprisonment on a child found guilty of a traffic offence.

(2) Section 104A (1), definition of “Magistrate” —

Omit “a special magistrate under the Child Welfare Act 1939”, insert instead “a member of the Children’s Court”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(3) Section 132A—

After section 132, insert:

Appeals where powers referred to in sec. 84A exercised

132A. (1) In this section—

“child”, in relation to a traffic offence, includes a person who was under the age of 18 years when the person committed the offence and was under the age of 21 years when the person was charged before a Justice or Justices with the offence;

“traffic offence” has the same meaning as it has in the Children (Criminal Proceedings) Act 1987.

(2) A proceeding by way of appeal or review in the Supreme Court or on appeal to the District Court may, in respect of any determination, conviction, finding of guilt or order made by a Justice or Justices in respect of a traffic offence committed by a child, be taken by the child concerned or, if the child concerned is under 18 years of age, on the child's behalf and in the child's name by a person responsible, within the meaning of the Children (Care and Protection) Act 1987, for the child or by the child's solicitor.

Land and Environment Court Act 1979 No. 204—

Section 64 (3)—

After section 64 (2), insert:

(3) Without affecting the generality of subsection (1), the Minister administering the Community Welfare Act 1987 may, at any stage of any proceedings before the Court in which an approved non-Government organisation within the meaning of that Act is a party, with the consent of that organisation, intervene by counsel, solicitor or agent and may examine witnesses and address the Court with respect to matters relevant to the proceedings.

Land Tax Management Act 1956 No. 26—

Section 10 (1) (g) (ii)—

Omit “a place licensed under Part VII of the Child Welfare Act, 1939, as amended by subsequent Acts,”, insert instead “a residential child care centre licensed under the Children (Care and Protection) Act 1987”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

Local Courts Act 1982 No. 164—

Section 14 (5)—

After section 14 (4), insert:

(5) The Chief Magistrate may not make such a requirement in respect of a Magistrate who is a member of the Children's Court except with the consent of the senior member of that Court.

Maintenance Act 1964 No. 74—

(1) Section 4 (7A)—

After section 4 (7), insert:

(7A) This section has effect subject to clause 25 of Schedule 5 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987.

(2) Section 5 (9A)—

After section 5 (9), insert:

(9A) This section has effect subject to clause 25 of Schedule 5 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987.

(3) (a) Section 7 (1), definition of "Court"—

Omit the definition, insert instead:

"Court" means a Local Court held before a Magistrate.

(b) Section 7 (1), definition of "Special magistrate"—

Omit the definition.

(4) Part II, Division 1, heading—

Omit "*Children's Courts*", insert instead "*Local Courts*".

(5) (a) Section 8A (1)—

Omit the subsection.

(b) Section 8A (2)—

Omit "subsection (1) (a), (b) or (c) has been made in respect of a child, or a child has been admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939, or the care of a child has been arranged under section 48G of that Act", insert instead "section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987 has been made in respect of a child, or a child is a ward within the meaning of that Act or a person subject to control within the meaning of the Children (Detention Centres) Act 1987,".

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

- (c) Section 8A (3), (4)—

Omit the subsections.

- (d) Section 8A (5)—

Omit the subsection, insert instead:

- (5) The Director-General may certify in writing that a specified child—

- (a) is, at the date of the certificate—

- (i) a child in respect of whom an order referred to in section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987 is in force;

- (ii) a ward within the meaning of that Act; or

- (iii) a person subject to control within the meaning of the Children (Detention Centres) Act 1987; and

- (b) was, during a specified period commencing not earlier than 3 months before the date of the certificate, such a child, ward or person,

and such a certificate purporting to be signed by the Director-General is, without proof of the Director-General's office or signature, evidence of the matters certified.

- (6) (a) Section 10 (3) (a)—

Omit the paragraph, insert instead:

- (a) in respect of a child in respect of whom a complaint or application for maintenance is made as referred to in section 8A; or

- (b) Section 10 (3) (b)—

Omit "Child Welfare Act, 1939, as amended by subsequent Acts", insert instead "Children (Care and Protection) Act 1987".

- (c) Section 10 (3)—

Omit "such a ward", insert instead "such a child".

- (7) (a) Section 22 (5)—

Omit "under the Child Welfare Act, 1939, as amended by subsequent Acts", insert instead "administering the Children (Care and Protection) Act 1987".

- (b) Section 22 (5)—

Omit "as so amended".

- (8) (a) Section 24 (1)—

Omit "a special magistrate", insert instead "a Magistrate".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(b) Section 24 (1)—

Omit “magistrate” where secondly and thirdly occurring, insert instead “Magistrate”.

(9) (a) Section 26 (c)—

After “8A” where firstly occurring, insert “(2)”.

(b) Section 26 (c)—

Omit:

ceases to be—

- (i) a child subject to an order referred to in section 8A (1) (a), (b) or (c) or 8A (3);
 - (ii) a child admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939; or
 - (iii) a child whose care has been arranged under section 48G of that Act,
- as the case may be.

Insert instead:

ceases to be a child the subject of an order referred to in section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987, a ward within the meaning of that Act or a person subject to control within the meaning of the Children (Detention Centres) Act 1987.

(10) Section 35 (3A)—

Omit the subsection, insert instead:

(3A) Where an order (including a varied order) is in force under this Part for the maintenance of a child and the child becomes or is—

- (a) a child in respect of whom an order referred to in section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987 is in force;
- (b) a ward within the meaning of that Act;
- (c) a person subject to control within the meaning of the Children (Detention Centres) Act 1987; or

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS—*continued*

- (d) a child in respect of whom financial assistance is being, or has been, given under the Children (Care and Protection) Act 1987 or any Act repealed by the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987,

the court may, on application by a person authorised for the purpose by the Director-General and upon notice being given to such persons and in such manner as the court directs, vary the order in so far as it relates to the receipt or disbursement of money payable under the order.

- (11) (a) Section 38 (1)—

Omit “special magistrate”, insert instead “court”.

- (b) Section 38 (2), (3)—

Omit “magistrate” wherever occurring, insert instead “court”.

- (c) Section 38 (2)—

Omit “he thinks”, insert instead “it thinks”.

- (12) Section 66 (1), definition of “New South Wales order” —

Omit “special magistrate”, insert instead “Magistrate”.

- (13) (a) Section 83 (4)—

Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.

- (b) Section 83 (5)—

Omit “court”, insert instead “prescribed court”.

- (14) (a) Section 86 (1)—

Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.

- (b) Section 86 (2)—

Omit “court”, insert instead “prescribed court”.

- (15) (a) Section 88 (1)—

Omit “Metropolitan Children’s Court at Sydney”, insert instead “prescribed court”.

- (b) Section 88 (1)—

Omit “in the court”, insert instead “in the prescribed court”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

(16) (a) Section 90 (1), (2)—

Omit "Metropolitan Children's Court at Sydney" wherever occurring, insert instead "prescribed court".

(b) Section 90 (5)—

Omit "The court", insert instead "The prescribed court".

(17) Section 93 (1)—

Omit "the court", insert instead "the prescribed court".

(18) Section 105A—

After section 105, insert:

Exclusion of persons from hearing of complaints

105A. During the hearing of any complaint under this Act, no person shall be or be permitted to be present in court except any one or more of the following:

- (a) the adjudicating Magistrate, any officer within the meaning of the Children (Care and Protection) Act 1987, the officers of the court, and a member of the police force;
- (b) the complainant and the defendant, and their respective barristers and solicitors;
- (c) the mother, sister or other relative or friend of the complainant, if desired by the complainant;
- (d) any person while being examined as a witness;
- (e) the mother, sister or female friend of any female witness, if desired by the witness while being examined;
- (f) any other person permitted by the court to be present.

(19) Section 108A—

After section 108, insert:

Publicity

108A. The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to the hearing of a complaint or application under this Act in the same way as they apply to criminal proceedings.

(20) Section 109 (a1)—

Omit "(1) or".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

(21) Section 113 (7)—

Omit the subsection, insert instead:

(7) The provisions of sections 10 and 11 of the Children (Criminal Proceedings) Act 1987 apply to the hearing of an appeal under this section in the same way as they apply to criminal proceedings.

(22) Section 117A—

Omit “special magistrate”, insert instead “Magistrate”.

Pre-Trial Diversion of Offenders Act 1985 No. 153—

Section 4 (1) (b)—

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

Prisoners (Interstate Transfer) Act 1982 No. 104—

(1) Section 5 (1), definition of “sentence of imprisonment” —

Omit “an institution within the meaning of the Child Welfare Act, 1939,” insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

(2) Section 5 (1), definition of “State sentence of imprisonment”—

Omit “an institution within the meaning of the Child Welfare Act 1939”, insert instead “a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Prisons Act 1952 No. 9—

Section 4 (1), definition of “prison” —

After “a prison”, insert “, but does not include a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Probation and Parole Act 1983 No. 194—

(1) (a) Section 4 (1), definition of “prison” —

After “1952”, insert “, and includes a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

(b) Section 4 (1), definition of “prisoner” —

Omit the definition, insert instead:

“prisoner” means—

(a) a prisoner within the meaning of the Prisons Act 1952; or

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

- (b) a person subject to control within the meaning of the Children (Detention Centres) Act 1987 by virtue of—
 - (i) an order in force under section 10 of that Act whereby the person has been transferred from a prison to a detention centre; or
 - (ii) an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that the whole or any part of a term of imprisonment imposed on the person be served in a detention centre;
- (c) Section 4 (1), definition of “term of imprisonment” —
 - (i) At the end of paragraph (d), insert “or”.
 - (ii) From paragraph (e), omit “or”.
 - (iii) Omit paragraph (f).
- (d) Section 4 (1A)—

After section 4 (1), insert:

(1A) In this Act, a reference to the governor of a prison includes, in relation to a detention centre within the meaning of the Children (Detention Centres) Act 1987, a reference to the superintendent of a detention centre.
- (2) (a) Section 47 (3)—

Omit “the Director, as defined in section 4 (1) of that Act”, insert instead “or was formerly a person subject to control, within the meaning of the Children (Detention Centres) Act 1987, the Director-General”.
- (b) Section 47 (3)—

After “institution” where lastly occurring, insert “or while a person subject to control, as the case may be”.
- (c) Section 47 (6)—

After section 47 (5), insert:

 - (6) In this section—
 - (a) a reference to the Commission, in relation to a prisoner or person referred to in subsection (3), is a reference to the Director-General; and
 - (b) a reference to the Director-General is a reference to the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

(3) Section 53—

Omit the section.

(4) Schedule 3, clause 6—

Omit the clause.

(5) Schedule 4—

Omit the Schedule.

Public Instruction (Amendment) Act 1916 No. 51—

(1) Section 2 (1), definition of “The Court” —

Omit the definition, insert instead:

“The Court” means a Local Court held before a Magistrate.

(2) Sections 3A, 8, 9—

Omit the sections.

Public Works Act 1912 No. 45—

Section 34 (6) (a)—

Omit “, or an institution constituted under Part X of the Child Welfare Act, 1939, as amended by subsequent Acts”, insert instead “or a detention centre within the meaning of the Children (Detention Centres) Act 1987”.

Registration of Births, Deaths and Marriages Act 1973 No. 87—

Section 4 (1), definition of “institution” —

Omit paragraph (e), insert instead:

- (e) a residential child care centre licensed under the Children (Care and Protection) Act 1987 or a facility within the meaning of that Act or a detention centre within the meaning of the Children (Detention Centres) Act 1987;

Search Warrants Act 1985 No. 37—

Section 10, definition of “search warrant” —

Omit:

section 145 of the Child Welfare Act 1939;

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS—*continued*

section 295 of the Community Welfare Act 1982;

Insert instead, in alphabetical order of Acts:

sections 24, 61, 94 and 116 of the Children (Care and Protection) Act 1987;

Stamp Duties Act 1920 No. 47—

Second Schedule, paragraph (e) of the *Exemptions* under the heading “LETTER OR POWER OF ATTORNEY” —

Omit “Children’s Court”, insert instead “the Children’s Court”.

Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)—

(1) Schedule 2, Part 1—

Omit:

Magistrate (under the Local Courts Act, 1982), other than the Chief Magistrate, a Deputy Chief Magistrate or a Magistrate who has limited tenure or is the holder of a prescribed office, within the meaning of that Act.

Insert instead:

Magistrate (under the Local Courts Act 1982) other than—

- (a) the Chief Magistrate;
- (b) a Deputy Chief Magistrate;
- (c) the senior member of the Children’s Court;
- (d) a member of the Children’s Court;
- (e) a Magistrate who has limited tenure; or
- (f) a Magistrate who is the holder of a prescribed office, within the meaning of the Local Courts Act 1982.

Senior member of the Children’s Court.

Member of the Children’s Court.

(2) Schedule 2, Part 1—

At the end of the Part, insert:

Full-time President of the Children’s Review Panel.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 3—*continued*
AMENDMENTS—*continued*

Supreme Court Act 1970 No. 52—

Third Schedule, paragraph (f)—

Omit “Part XIV of the Child Welfare Act, 1939”, insert instead “Part 2 of the Children (Criminal Proceedings) Act 1987”.

Youth and Community Services Act 1973 No. 90—

(1) Section 3, definition of “relative” —

Omit paragraph (c), insert instead:

(c) a person in whose care or custody the person has been placed in accordance with the provisions of the Adoption of Children Act 1965;

(2) Section 27 (b)—

Omit “a neglected child within the meaning of Part XIV of the Child Welfare Act, 1939, and may be dealt with in accordance with the provisions of that Part”, insert instead “a child in need of care within the meaning of the Children (Care and Protection) Act 1987 and may be dealt with in accordance with Part 5 of that Act”.

SCHEDULE 4

(Sec. 8)

FURTHER AMENDMENTS

Adoption of Children Act 1965 No. 23—

(1) Long title—

Omit “the Child Welfare Act, 1939,”.

(2) Sections 3, 4—

Omit the sections.

(3) Section 5 (1)—

Omit “provisions of section 4”, insert instead “repeal of the former Acts”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

- (4) (a) Section 6, definition of “Director-General” —

Omit the definition of “Director”, insert instead:

“Director-General” means the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.

- (b) Section 6, definition of “Principal officer” —

Omit “Director”, insert instead “Director-General”.

- (c) Section 6, definition of “the former Acts” —

Omit the definition, insert instead:

“the former Acts” means all or any of the enactments of the Child Welfare Act 1939, or of any Act amending that Act.

- (5) Sections 6E, 6K, 6R—

Omit “Director” wherever occurring, insert instead “Director-General”.

- (6) Sections 10, 11, 12, 13, 14, 15, 18, 21, 25, 28, 31A, 31B, 32, 34, 41, 49A, 50, 51, 52, 68A, 68B—

Omit “Director” wherever occurring, insert instead “Director-General”.

- (7) Sections 28 (3), 34 (4A) (e)—

Omit “Director’s” wherever occurring, insert instead “Director-General’s”.

- (8) Section 69—

Omit the section.

Child Welfare Act 1939 No. 17—

Sections 81AA, 81AB—

After section 81, insert:

Right of appearance

81AA. (1) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person—

- (a) the child or young person and each person responsible for the child or young person; and
- (b) the Director-General,

may appear in person in the proceedings, or be represented by a barrister or solicitor or, by leave of the court, by an agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

(2) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, any other person who, in the opinion of the court, has a genuine concern for the welfare of the child or young person to whom the proceedings relate may, by leave of the court, appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

(3) In this section—

“person responsible”, in relation to a child or young person, means—

- (a) a parent of the child or young person;
- (b) a person (other than the Minister or the Director-General) who has the care of the child or young person; or
- (c) in the case of a child or young person who is in the care of the Minister or the Director-General—a person who had the care of the child or young person immediately before the child or young person came to be in the care of the Minister or the Director-General, as the case may be.

Court's powers with respect to representation for children

81AB. (1) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, the court may appoint a person to act as guardian ad litem for the child or young person.

(2) In any proceedings under this Part with respect to a neglected or uncontrollable child or young person, the court may, if it appears to it that the child or young person ought to be separately represented—

- (a) order that the child or young person be separately represented; and
- (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child or young person.

(3) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the court has made an order under subsection (2) (b).

Children (Care and Protection) Act 1987—

(1) Section 3 (1), paragraph (a) (i) of the definition of “exempt premises”—

Omit the subparagraph, insert instead:

- (i) a State school or a registered school within the meaning of the Education and Public Instruction Act 1987;

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

- (2) Section 3 (1), paragraph (a) (ii) of the definition of “exempt premises”—

Omit the subparagraph, insert instead:

- (ii) a private hospital or nursing home licensed under the Private Health Establishments Act 1982;

- (3) Section 3 (1), paragraph (a) (iii) of the definition of “exempt premises”—

- (a) Omit “an admission centre or a mental hospital within the meaning of the Mental Health Act 1958”, insert instead “a hospital within the meaning of the Mental Health Act 1983”.

- (b) Omit “an authorised hospital within the meaning of the Mental Health Act 1958”, insert instead “an authorised hospital within the meaning of the Mental Health Act 1983”.

- (4) Schedule 4, clause 21 (4)–(8)—

Omit the subclauses, insert instead:

(4) Part 6 of the Interpretation Act 1987 applies to a rule made under this clause in the same way as it applies to a statutory rule within the meaning of that Act.

Children (Equality of Status) Act 1976 No. 97—

- (1) (a) Section 12 (2), (3)—

Omit the subsections.

- (b) Section 12 (4)—

Omit “or (2)”.

- (c) Section 12 (5) (a)—

Omit “or (2) (a)”.

- (d) Section 12 (7) (a)—

Omit “1964; or”, insert instead “1964,”.

- (e) Section 12 (7) (b)—

Omit the paragraph.

- (f) Section 12 (7)—

Omit “or discharge, as the case may be,”.

- (2) (a) Section 14 (2), (3)—

Omit the subsections.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

(b) Section 14 (4)—

Omit “or (2)”.

(c) Section 14 (5) (a)—

Omit “or (2) (a)”.

(d) Section 14 (7)—

Omit “or (2)”.

Commonwealth Powers (Family Law—Children) Act 1986 No. 182—

Schedule 1—

Omit “Community Welfare Act 1982”, insert instead “Children (Care and Protection) Act 1987”.

Evidence Act 1898 No. 11—

(1) Section 43A (a)—

At the end of section 43A (a), insert “or”.

(2) Section 43A (c)—

Omit the paragraph.

Finances Adjustment Act 1932 No. 27—

(1) Long title—

Omit “the Government Relief Administration Act, 1930,”.

(2) Section 2—

Omit the section.

(3) Part VI—

Omit the Part.

Maintenance Act 1964 No. 74—

(1) Long title—

Omit “the Child Welfare Act, 1939–1961,”.

(2) Section 1 (4)—

Omit the subsection.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 4—*continued*FURTHER AMENDMENTS—*continued*

- (3) Section 7 (1), definition of "Director-General" —

After the definition of "Court", insert:

"Director-General" means the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.

- (4) Section 8A (2)—

Omit "permanent head of the Department of the Government administering that Act", insert instead "Director-General".

- (5) (a) Section 28A (1) (a)—

Omit "permanent head of the Department of the Government administering the Child Welfare Act, 1939," insert instead "Director-General".

- (b) Section 28A (1) (b), (c)—

Omit "that permanent head" wherever occurring, insert instead "the Director-General".

- (6) (a) Section 66 (1), definition of "Certified copy" —

From paragraph (a), omit "permanent head", insert instead "Director-General".

- (b) Section 66 (1), definition of "Permanent head" —

Omit the definition.

- (7) Section 69A (1), (4), (5)—

Omit "permanent head" wherever occurring, insert instead "Director-General".

- (8) Section 80 (1)—

Omit "permanent head" wherever occurring, insert instead "Director-General".

- (9) Section 81 (5)—

Omit "permanent head", insert instead "Director-General".

- (10) Section 82—

Omit "permanent head", insert instead "Director-General".

- (11) Section 83 (1)–(4)—

Omit "permanent head" wherever occurring, insert instead "Director-General".

- (12) Section 84 (1), (2)—

Omit "permanent head" wherever occurring, insert instead "Director-General".

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

(13) Section 87—

Omit “permanent head” wherever occurring, insert instead “Director-General”.

(14) Section 109A—

Omit “permanent head” wherever occurring, instead instead “Department Head”.

(15) Schedule Two—

Omit so much as amends Act No. 17, 1939.

(16) Schedule Three—

Omit so much as relates to Act No. 17, 1939.

Mental Health Act 1983 No. 178—

(1) Section 4 (1), definition of “intellectually handicapped person under guardianship”—

Omit the definition, insert instead:

“intellectually handicapped person under guardianship” means a person who is being dealt with as an intellectually handicapped person under the provisions of Part IX of the Child Welfare Act 1939;

(2) Section 86 (2) (e)—

Omit the paragraph, insert instead:

(e) where the person is an intellectually handicapped person under guardianship of the Minister for Youth and Community Services, that Minister.

(3) Section 108 (2) (c)—

Omit the paragraph, insert instead:

(c) where the patient is an intellectually handicapped person under guardianship of the Minister for Youth and Community Services, that Minister consents to the application.

Miscellaneous Acts (Administrative Changes) Amendment Act 1975 No. 65—

(1) (a) Section 2 (1)—

Omit “, 8”.

(b) Section 2 (2)—

Omit “, 7, 12”.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

(2) Section 8—

Omit the section.

Private Health Establishments Act 1982 No. 130—

(1) Long title—

Omit “, nursing homes and certain residential centres for handicapped persons”, insert instead “and nursing homes”.

(2) Section 3—

Omit the section.

(3) (a) Section 4 (1), definition of “establishment” —

Omit “, nursing home or residential centre for handicapped persons”, insert instead “or nursing home”.

(b) Section 4 (1), definition of “residential centre for handicapped persons” —

Omit the definition.

(4) Part II, heading—

Omit “, NURSING HOMES AND CERTAIN RESIDENTIAL CENTRES FOR HANDICAPPED PERSONS”, insert instead “AND NURSING HOMES”.

(5) Section 6 (3)—

Omit the subsection.

(6) Section 24—

Omit the section.

(7) Section 28 (1)—

Omit the subsection.

(8) Section 30 (1)—

Omit the subsection.

(9) Section 31—

Omit “or residential centre for handicapped persons”.

(10) Section 32 (1)—

Omit the subsection.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*
FURTHER AMENDMENTS—*continued*

(11) Section 35, definition of “establishment” —

Omit the definition.

(12) Schedule 3, clause 6—

Omit the clause.

Prostitution Act 1979 No. 71—

Section 5 (2)—

Omit “not being a child within the meaning of the Community Welfare Act, 1982,” insert instead “who is of or above the age of 18 years and”.

Protected Estates Act 1983 No. 179—

Section 34 (2)—

Omit the subsection.

Public Finance and Audit Act 1983 No. 152—

Schedule 2—

Insert, in appropriate alphabetical order:

Home Care Service of New South Wales.

Registration of Births, Deaths and Marriages Act 1973 No. 87—

Sections 15 (c) (ii), (c), 46 (1) (a), (2)—

Omit “permanent head” wherever occurring, insert instead “Department Head”.

Youth and Community Services Act 1973 No. 90—

(1) Section 2A—

Omit the section.

(2) Section 3, definition of “Director-General” —

Omit the definition of “Director”, insert instead:

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

(3) Section 3A (4) (a)—

Omit “Director”, insert instead “Director-General”.

(4) Part II—

Omit the Part.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 4—*continued*

FURTHER AMENDMENTS—*continued*

- (5) Sections 18, 19, 24, 26, 31, 34—

Omit “Director” wherever occurring, insert instead “Director-General”.

- (6) Sections 19 (6) (b), 24 (5)—

Omit “Director’s” wherever occurring, insert instead “Director-General’s”.

- (7) Section 33—

Omit the section.

SCHEDULE 5

(Sec. 9)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

PART 1

PRELIMINARY

Interpretation

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

“the 1987 Community Welfare legislation” means this Act and the following Acts:

Community Welfare Act 1987;

Children’s Court Act 1987;

Children (Care and Protection) Act 1987;

Children (Criminal Proceedings) Act 1987;

Children (Community Service Orders) Act 1987;

Children (Detention Centres) Act 1987.

- (2) Except in so far as the context or subject-matter otherwise indicates or requires, an expression used in a provision of this Schedule has the same meaning as it has in the relevant provisions of the 1987 Community Welfare legislation relating to the subject-matter of that provision.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Savings relating to repealed enactments**

2. The repeal by this Act of any enactment does not affect—
 - (a) the proof of any past act or thing;
 - (b) any duty, obligation, liability, benefit, privilege or right saved by the operation of the enactment; or
 - (c) any amendment or validation made by the enactment.

Interpretation Act 1897

3. The savings contained in this Schedule do not limit any saving in the Interpretation Act 1897.

PART 2

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—CHILD WELFARE ACT 1939

Pending proceedings in courts with respect to children and young persons

4. (1) Any proceedings with respect to a child or young person within the meaning of the Child Welfare Act 1939 (whether or not under that Act) that were pending in a court immediately before the appointed day may be continued and completed, and any order may be made in those proceedings and shall, subject to this Part, be given effect to, as if the 1987 Community Welfare legislation had not been enacted.

(2) The provisions of this Part apply to and in respect of any order made or any thing done by a court in any proceedings referred to in subclause (1) as if the order had been made or the thing done immediately before the appointed day.

(3) In this clause, “the appointed day” means the day appointed and notified under—

- (a) section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 5 of that Act;
- (b) section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 2 of that Act; or
- (c) section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 3 of that Act,

whichever is appropriate to the proceedings referred to in subclause (1).

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Boarded-out wards or adopted boarders**

5. (1) A ward under the Child Welfare Act 1939 who, immediately before the appointed day, was a person boarded-out under section 23 (1) of that Act or was an adopted boarder under that Act shall, on and from that day, be deemed—

(a) to have been placed, under section 91 (1) (d) of the Children (Care and Protection) Act 1987, in the custody of a person approved by the Minister, being the person with whom the ward, immediately before that day, was a person so boarded-out or with whom the adopted boarder, immediately before that day, remained by the authority of the Minister, as the case may be; and

(b) to have been so placed on the same conditions as those which applied in respect of the ward immediately before the appointed day.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

Wards

6. (1) A person who, immediately before the appointed day—

(a) was a ward under the Child Welfare Act 1939 otherwise than by reason of having been committed to an institution under that Act; or

(b) was, under that Act, a person—

(i) committed to the care of the Minister to be dealt with as a ward admitted to State control; and

(ii) not absolutely discharged from the supervision and control of the Minister,

shall be deemed to be a ward within the meaning of the Children (Care and Protection) Act 1987.

(2) Where—

(a) before the appointed day a person became a ward under section 139A of the Child Welfare Act 1939; and

(b) the person was a ward immediately before that day,

then, if at the expiration of the period applicable to the person under section 139A (2) of the Child Welfare Act 1939 the person is a ward, the person shall, notwithstanding any other provision of the Children (Care and Protection) Act 1987, cease to be a ward upon the expiration of that period.

(3) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Licences to control child care centres**

7. (1) Subject to subclause (2), where a licence authorising a person to control a child care centre on any premises, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

(a) the licence shall be deemed—

(i) to be a licence for a child care service, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

(ii) subject to that Act, to be in force for a period of 2 years from the appointed day;

(b) the licence referred to in paragraph (a) (i) shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day; and

(c) the person authorised by a licence, granted under section 29 of the Child Welfare Act 1939, to conduct a child care centre on those premises shall be deemed to be the authorised supervisor under the licence referred to in paragraph (a) (i).

(2) Where a licence, being a licence of the kind firstmentioned in subclause (1), was granted to a person as referred to in that subclause and authorised the person to control a child care centre, being a child care centre conducted in the home of another person for not more than 4 children under the age of 6 years (including any children under the age of 6 years of that other person)—

(a) the licence shall be deemed to have been granted—

(i) except as provided by subparagraph (ii), to the employer of the person to whom it was granted; or

(ii) where the person to whom it was granted controls the child care centre otherwise than as an employee, to such person as the Director-General determines; and

(b) the person to whom the licence was granted shall be deemed to be the authorised supervisor under the licence referred to in subclause (1) (a) (i).

(3) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 1 of Part 3 of that Act.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Permits to control child care centres**

8. (1) Where a permit authorising a person to control a child care centre on any premises, granted under section 32 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

- (a) the permit shall be deemed—
 - (i) to be a licence for a child care service, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and
 - (ii) subject to that Act, to be in force until the expiration of the period for which the permit was granted;
- (b) the licence shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the permit was subject immediately before the appointed day; and
- (c) the person authorised by a permit, granted under section 32 of the Child Welfare Act 1939, to conduct a child care centre on those premises shall be deemed to be the authorised supervisor under the licence.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 1 of Part 3 of that Act.

Licences to control children’s depots, homes or hostels

9. (1) Where a licence authorising a person to control a children’s depot, home or hostel on any premises, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

- (a) the licence shall be deemed—
 - (i) to be a licence for a residential child care centre, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and
 - (ii) subject to that Act, to be in force for a period of 3 years from the appointed day;
- (b) the licence referred to in paragraph (a) (i) shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day; and
- (c) the person authorised by a licence, granted under section 29 of the Child Welfare Act 1939, to conduct a children’s depot, home or hostel on those premises shall be deemed to be the licensed manager under the licence referred to in paragraph (a) (i).

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 2 of Part 3 of that Act.

Permits to control children’s depots, homes or hostels

10. (1) Where a permit authorising a person to control a children’s depot, home or hostel on any premises, granted under section 32 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

(a) the permit shall be deemed—

(i) to be a licence for a residential child care centre, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

(ii) subject to that Act, to be in force until the expiration of the period for which the permit was granted;

(b) the licence shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the permit was subject immediately before the appointed day; and

(c) the person authorised by a permit, granted under section 32 of the Child Welfare Act 1939, to conduct a children’s depot, home or hostel on those premises shall be deemed to be the licensed manager under the licence.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 2 of Part 3 of that Act.

Licences to conduct and control private foster homes for children

11. (1) Where a licence authorising a person to conduct and control a private foster home, granted under section 29 of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

(a) the licence shall be deemed to be a fostering authority, within the meaning of the Children (Care and Protection) Act 1987, granted to that person; and

(b) the fostering authority shall, subject to clause 7 of Schedule 1 to the Children (Care and Protection) Act 1987, be deemed to be subject to the same conditions and requirements, if any, as those to which the licence was subject immediately before the appointed day.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Division 4 of Part 3 of that Act.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Orders of discharge of persons in institutions**

12. (1) An order of discharge made under section 54 (4) of the Child Welfare Act 1939 and in force immediately before the appointed day shall, on and from that day, be deemed to be a parole order made by the Parole Board under section 27 (2) of the Probation and Parole Act 1983.

(2) Subject to the Probation and Parole Act 1983, a parole order referred to in subclause (1) shall—

- (a) remain in force for the period; and
- (b) be subject to the conditions,

specified in the discharge order deemed, by that subclause, to be the parole order.

(3) For the purposes of the Probation and Parole Act 1983, discharge from an institution under section 54 (4) of the Child Welfare Act 1939 shall be deemed to be release, on parole, from a prison.

(4) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Punishment for misbehaving in institutions

13. (1) Where any punishment was imposed on a person under section 56 (3) or 57 (2) (a) or (b) of the Child Welfare Act 1939 before the appointed day but had not been completely served before that day, that person is liable to serve, for the unexpired period of the punishment, such of the punishments specified in section 21 (1) of the Children (Detention Centres) Act 1987 as is determined by the superintendent of the detention centre in which that person is for the time being detained in accordance with directions given to the superintendent by the Director-General.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Licences to take part in public entertainments

14. (1) Where a licence authorising a child to be employed in any place or premises mentioned in section 68 (1) (a) of the Child Welfare Act 1939, granted under section 69 of that Act, was in force immediately before the appointed day, the licence shall, on and from that day, be deemed—

- (a) to be a children’s employment licence, within the meaning of the Children (Care and Protection) Act 1987, granted in respect of that child;
- (b) subject to that Act, to be in force until the expiration of the period for which the licence first mentioned in this subclause was granted; and

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987***SCHEDULE 5—continued****SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—continued**

- (c) to be subject to the same conditions, if any, as those to which the licence firstmentioned in this subclause was subject immediately before the appointed day.

(2) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 4 of that Act.

Powers exercised by the court under section 82 of the Child Welfare Act 1939

15. (1) Where a person was, immediately before the appointed day—

- (a) a person subject to probation by virtue of section 82 (1) (b) of the Child Welfare Act 1939 or a person committed to an institution by virtue of section 82 (1) (e) of that Act, the person shall, on and from that day, be deemed, subject to the Children (Care and Protection) Act 1987, to have been placed, by virtue of an order made under section 72 (1) (c) (i) of the Children (Care and Protection) Act 1987, under the supervision of an officer for the period expiring—

(i) upon the expiry of the period for which the person was released on probation under section 82 (1) (b) of the Child Welfare Act 1939;

(ii) upon the expiry of 2 years from when the order was made; or

(iii) upon the person's attaining the age of 18 years,

whichever first occurs;

- (b) a person committed to the care of another person under section 82 (1) (c) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed to be a person placed, under section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987, in the custody of that other person for the period expiring—

(i) upon the expiry of the period specified by the court making the committal;

(ii) upon the expiry of 2 years from when the person was so committed; or

(iii) upon the person's attaining the age of 18 years,

whichever first occurs, and that other person shall, for the purposes of Part 5 of the Children (Care and Protection) Act 1987, be deemed to have given undertakings to observe the conditions to which that other person was, immediately before the appointed day, subject by virtue of section 82 (1) (c) of the Child Welfare Act 1939; or

- (c) a person in the care of the Minister by virtue of section 82 (1) (d) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Care and Protection) Act 1987, to be a ward by virtue of an order made under section 72 (1) (c) (iii) of the Children (Care and Protection) Act 1987 for the period expiring—

(i) upon the expiry of 2 years from when the order was made; or

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (ii) upon the person's attaining the age of 18 years,

whichever first occurs.

(2) Where a person has, under section 82 (2) of the Child Welfare Act 1939, undertaken, before the appointed day, to observe any conditions in relation to a child, that undertaking shall, on and from that day, be deemed—

- (a) where the undertaking has not expired, to be, on and from that day, an undertaking accepted under section 72 (1) (b) (i) of the Children (Care and Protection) Act 1987;
- (b) where it was given otherwise than by a person responsible for the child, to have been given by a person responsible for the child; and
- (c) to be in force for the period expiring upon the expiry of the period determined, under section 82 (2) of the Child Welfare Act 1939, by the court when releasing the child under that subsection.

(3) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 5 of that Act.

Powers exercised by the court under section 83 of the Child Welfare Act 1939

16. (1) Where, immediately before the appointed day—

- (a) a person was subject to probation by virtue of section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Criminal Proceedings) Act 1987, to be subject, by virtue of section 33 (1) (e) of the Children (Criminal Proceedings) Act 1987, to probation on the same conditions, if any, as those imposed by or under section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939 and for the period expiring—
 - (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the period for which the person was released on probation under section 83 (1) (a) or (2) (a) of the Child Welfare Act 1939;
 - (ii) where the period for which the person was so released exceeds 12 months and, on the appointed day, less than 12 months have elapsed—upon the expiry of 12 months from the date of the release; or
 - (iii) where the period for which the person was so released exceeds 12 months and, on the appointed day, 12 months or more have elapsed—upon the appointed day;

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (b) a person was a person committed to the care of another person under section 83 (1) (b) or (2) (b) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed, subject to the Children (Criminal Proceedings) Act 1987, to be subject, by virtue of section 33 (1) (e) of the Children (Criminal Proceedings) Act 1987, to probation on the same conditions, if any, as those imposed under section 83 (1) (b) or (2) (b) of the Child Welfare Act 1939, upon the person's being so committed, and, in addition, on the condition that the person reside with the person into whose care the person was so committed, and to be so subject for the period expiring—
- (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the period for which the person was so committed;
 - (ii) where the period for which the person was so committed exceeds 12 months and, on the appointed day, less than 12 months have elapsed—upon the expiry of 12 months from the date of the committal; or
 - (iii) where the period for which the person was so committed exceeds 12 months and, on the appointed day, 12 months or more have elapsed—upon the appointed day;
- (c) a person was a person committed to an institution under section 83 (1) (c) or (2) (d) of the Child Welfare Act 1939, the person shall, on and from that day, be deemed to be a person subject to control pursuant to an order made under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 expiring—
- (i) except as provided by subparagraph (ii), (iii), (iv) or (v)—upon the expiry of the term specified by the court making the committal;
 - (ii) where that term exceeds 2 years and the person committed has, on the appointed day, served less than 2 years of that term—upon the expiry of 2 years from the date of the committal;
 - (iii) where that term exceeds 2 years and the person committed has, on the appointed day, served 2 or more years of that term—upon the appointed day;
 - (iv) where the person was committed generally and has, on the appointed day, served less than 1 year—upon the expiry of 1 year from the date of the committal; or
 - (v) where the person was committed generally and has, on the appointed day, served 1 year or more—upon the appointed day; and

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (d) any recognizance entered into pursuant to section 83 (2) (e) or (3) (c) of the Child Welfare Act 1939 was in force, it shall, on and from that day, be deemed to be a recognizance entered into pursuant to section 33 (1) (b) of the Children (Criminal Proceedings) Act 1987 expiring—
- (i) except as provided by subparagraph (ii) or (iii)—upon the expiry of the term specified by the court which required the recognizance to be entered into;
 - (ii) where that term exceeds 12 months and the recognizance has enured for less than 12 months of that term—upon the expiry of 12 months from the date the recognizance was entered into; or
 - (iii) where that term exceeds 12 months and the recognizance has, on the appointed day, enured for 12 months or more of that term—upon the appointed day.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 3 of that Act.

Directions under section 87 (1A) of the Child Welfare Act 1939

17. (1) A direction given under section 87 (1A) of the Child Welfare Act 1939 in force on the appointed day that a person be detained in a shelter shall, on and from that day, be deemed, where the period specified in the sentence to which the direction applies has not expired, to be an order under section 19 of the Children (Criminal Proceedings) Act 1987.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Criminal Proceedings) Act 1987 in relation to the commencement of Part 2 of that Act.

Persons detained in shelters under section 92 of the Child Welfare Act 1939

18. (1) A person detained, pursuant to section 92 of the Child Welfare Act 1939, in a shelter on the appointed day may continue to be so detained but for not more than 14 days commencing on that day.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

Persons transferred to institutions under section 94 of the Child Welfare Act 1939

19. (1) A person transferred, pursuant to section 94 of the Child Welfare Act 1939, from a prison to an institution before the appointed day and detained in an institution on that day shall, on and from that day, be deemed to be a person transferred to a detention centre pursuant to section 10 of the Children (Detention Centres) Act 1987.

(2) In this clause, “the appointed day” means the day appointed and notified under section 2 (2) of the Children (Detention Centres) Act 1987 in relation to the commencement of that Act.

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Persons detained in shelters under section 135 of the Child Welfare Act 1939**

20. (1) A person detained, pursuant to section 135 of the Child Welfare Act 1939, in a shelter on the appointed day shall be forthwith discharged from the shelter.

(2) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) in relation to the commencement of section 3 in its application to section 135 of the Child Welfare Act 1939.

Orders under section 136 of the Child Welfare Act 1939

21. (1) An order in force under section 136 of the Child Welfare Act 1939 immediately before the appointed day shall cease to have effect on that day.

(2) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) in relation to the commencement of section 3 in its application to section 136 of the Child Welfare Act 1939.

Interstate wards

22. (1) A person who, immediately before the appointed day, was an interstate ward referred to in section 139A of the Child Welfare Act 1939 shall, on and from that day, be deemed to be an interstate ward within the meaning of section 95 of the Children (Care and Protection) Act 1987.

(2) Any arrangements referred to in section 139A (3) (a) of the Child Welfare Act 1939 that were in force immediately before the appointed day shall, on and from that day, be deemed to be arrangements referred to in section 95 (2) (a) of the Children (Care and Protection) Act 1987.

(3) In this clause, "the appointed day" means the day appointed and notified under section 2 (2) of the Children (Care and Protection) Act 1987 in relation to the commencement of Part 6 of that Act.

PART 3

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—MAINTENANCE ACT
1964**Interpretation**

23. In this Part—

"prescribed Local Court" means the Local Court held at 323 Castlereagh Street, Sydney;

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

“the appointed day” means the day appointed and notified under section 2 (5) in relation to the commencement of the provisions of Schedule 3 relating to the Maintenance Act 1964.

Pending proceedings under Maintenance Act 1964

24. (1) Any proceedings commenced under the Maintenance Act 1964 and pending in a court immediately before the appointed day may be continued and completed, and any order may be made in those proceedings and shall, subject to this Part, be given effect to, as if this Act had not been enacted.

(2) The provisions of this Part apply to and in respect of any order made or any thing done by a court in any proceedings referred to in subclause (1) as if the order had been made or the thing done immediately before the appointed day.

Savings—Maintenance Act 1964

25. (1) Any order made, registered or confirmed or deemed to have been made, registered or confirmed under the Maintenance Act 1964 and in force immediately before the appointed day shall, on and from that day, be deemed—

(a) to have been made, registered or confirmed, as the case may be, under that Act, as amended by this Act, and may be enforced, discharged, suspended, varied or annulled or otherwise dealt with as if it had been so made, registered or confirmed; and

(b) to have been made—

(i) where there is a Local Court at the place where the order was made, by that Local Court; or

(ii) where there is no Local Court at the place where the order was made, by the Local Court nearest by the most practicable route to the place where the order was made.

(2) All records with respect to an order referred to in subclause (1) shall, as soon as practicable after the appointed day, be transferred to, and become records of, the Local Court by which the order is, by subclause (1) (b), to be deemed to have been made.

(3) Any overseas order, within the meaning of Division 1 of Part IV of the Maintenance Act 1964, registered immediately before the appointed day under Division 3 of that Part shall, on and from that day, be deemed to be an overseas order registered under Division 3 of that Part, as amended by this Act, in the prescribed Local Court.

(4) All records with respect to any overseas order referred to in subclause (3) shall, as soon as practicable after the appointed day, be transferred to, and become records of, the prescribed Local Court.

Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987

SCHEDULE 5—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

PART 4

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—INFANTS' CUSTODY
AND SETTLEMENTS ACT 1899

Maintenance orders under Infants' Custody and Settlements Act 1899

26. (1) Any order for the payment of a weekly or other periodical sum made by a children's court under the Infants' Custody and Settlements Act 1899 in the exercise of the powers and authorities conferred by section 12 (2) of the Child Welfare Act 1939 and in force immediately before the appointed day shall, on and from that day, be deemed to be an order for the payment of such a sum made by a Local Court under the firstmentioned Act.

(2) In this clause, "the appointed day" means the day appointed and notified under section 2 (5) in relation to the commencement of the provisions of Schedule 3 relating to the Infants' Custody and Settlements Act 1899.

PART 5

GENERAL

References in other Acts, etc.

27. (1) On and from the appointed day, a reference in any Act (whether enacted before or after the date of assent to this Act) or in any other instrument or document, whether of the same or of a different kind—

- (a) to the Child Welfare Act 1939;
- (b) to the Community Welfare Act 1982; or
- (c) to any provision of either of those Acts,

extends to include a reference—

- (d) to the Community Welfare Act 1987;
- (e) to the Children's Court Act 1987;
- (f) to the Children (Care and Protection) Act 1987;
- (g) to the Children (Criminal Proceedings) Act 1987;
- (h) to the Children (Community Service Orders) Act 1987;
- (i) to the Children (Detention Centres) Act 1987; or

*Miscellaneous Acts (Community Welfare) Repeal and Amendment 1987*SCHEDULE 5—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(j) to the corresponding provision of the relevant Act,
as the case requires.

(2) In this clause, a reference to the appointed day—

- (a) in relation to a reference to the Child Welfare Act 1939—is a reference to the day on which the last of the provisions of that Act is repealed by this Act;
- (b) in relation to a reference to a provision of the Child Welfare Act 1939—is a reference to the day on which that provision is repealed by this Act; or
- (c) in relation to the Community Welfare Act 1982 or a provision of that Act—is a reference to the date of assent to this Act.

Regulations

28. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the 1987 Community Welfare legislation.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on and from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication in the Gazette.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

