

**CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT
BILL 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to amend the Children (Criminal Proceedings) Act 1987 in relation to—
 - (i) the remittal of cases to other courts; and
 - (ii) the granting of consent to the publication of the names of children involved in criminal proceedings; and
 - (iii) the reliance on the apparent age of a person in determining the jurisdiction of a court to hear and determine criminal proceedings against the person; and
 - (iv) the duties of a court to acquaint children against whom criminal proceedings are being taken with the nature of those proceedings; and
 - (v) other minor matters; and
- (b) to make minor amendments to the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Children (Criminal Proceedings) Act 1987.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987.

Children (Criminal Proceedings) Amendment 1988

SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987**Definitions**

Schedule 1 (1) (a) inserts a new definition of "court" into section 3 (1). The proposed definition will provide that the expression "court" includes a Justice.

Schedule 1 (1) (b) substitutes the definitions of "parent" and "person responsible" in section 3 (1) so as to ensure that the Minister for Family and Community Services and the Director-General of the Department of Family and Community Services may be regarded as parents or persons responsible, as the case may be, in relation to children in their care or custody.

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

Schedule 1 (2) (a) amends section 7 so as to ensure that a Justice, as well as a Local Court, is precluded from hearing or determining criminal proceedings that the Children's Court has jurisdiction to hear and determine.

Schedule 1 (2) (b) further amends section 7 so as to ensure that the section does not limit any other provision of the Act under which a Local Court or Justice is given jurisdiction to hear and determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.

Courts may rely on apparent age of defendants

Schedule 1 (3) inserts a new section 7A. The proposed section will allow a court to rely on a person's apparent age for the purpose of determining whether or not it has jurisdiction with respect to that person in circumstances where no other evidence of that person's age is readily available.

Publication of names etc.

Schedule 1 (4) (a) amends section 11 so as to increase, from 14 to 16, the age at or above which a consent to the publication of information concerning criminal proceedings against a child may be given by the child.

Schedule 1 (4) (b) further amends section 11 so as to provide that such a consent, in relation to a child who is under the age of 16, must be given by a court rather than, as is presently the case, by the Attorney General.

Schedule 1 (4) (c) further amends section 11 so as to provide that such a consent, in relation to a child who is under the age of 16, may not be given except with the concurrence of the child or (if the child is incapable of giving concurrence) where a court is of the opinion that the public interest so requires.

Courts to explain proceedings to children

Schedule 1 (5) amends section 12 so as to vary the requirements of that section with respect to the information that a court must ensure is given to children against whom criminal proceedings are being taken. It will be enough if the court takes such steps as, in its opinion, are reasonably practicable to acquaint the child with the nature of the proceedings and if the court explains to the child, whenever in the court's opinion it is necessary to do so, aspects of the court's procedure and its decisions or rulings.

Recording of conviction

Schedule 1 (6) amends section 14 so that the section refers to "recording a finding of guilt as a conviction" as well as to "proceeding to a conviction".

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Background reports

Schedule 1 (7) (a) amends section 25 (which requires background reports to be given to a court prior to sentencing) so as to exclude the offence of contempt of court from the application of that section.

Schedule 1 (7) (b) further amends section 25 so as to remove the existing requirement of that section that a background report must be tendered by the prosecutor in the proceedings for the purposes of which the report has been prepared.

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

Schedule 1 (8) amends section 29 as a consequence of the amendments made by Schedule 1 (1) (a) and (2).

Hearing of charges in the Children's Court

Schedule 1 (9) (a) and (b) amend section 31 by way of statute law revision.

Schedule 1 (9) (c) further amends section 31 so as—

- (a) to enable proceedings on an indictable offence to be remitted to a superior court for the sentencing of a defendant if the defendant has pleaded guilty to the offence and if the Children's Court is of the opinion that the proceedings may not properly be disposed of in a summary manner (proposed section 31 (5)); and
- (b) to enable proceedings against a person who is of or above the age of 18 years to be remitted to a Local Court or a Justice if the Children's Court is of the opinion that the case ought not to be dealt with by the Children's Court (proposed section 31 (6)–(10)).

Penalties

Schedule 1 (10) amends section 33 so as to replace the existing "ranking" of penalties with a provision that merely requires the Children's Court to consider all non-custodial penalties before deciding to commit a child to a detention centre.

Term of control order

Schedule 1 (11) substitutes section 37 so as to remove a reference to a repealed section of the Children (Care and Protection) Act 1987 and so as to remove any doubt as to when a control order under the Act takes effect.

Definitions for the purposes of Division 5 of Part 3

Schedule 1 (12) amends section 39 so as to allow officers employed within the Department of Corrective Services to be appointed as authorised officers for the purposes of Division 5 of Part 3.

Procedures for remitting cases from one court to another

Schedule 1 (13) amends section 46 so as to provide that a reference to a clerk or other proper officer of a court is, for the purposes of that section, to be read as including, in relation to a Justice, a reference to the Justice.

Savings and transitional provisions

Schedule 1 (14) inserts a new section 52. The proposed section gives effect to the proposed Schedule 2.

Schedule 1 (15) inserts a new Schedule 2. The proposed Schedule contains—

- (a) provisions enabling the Governor-in-Council to make regulations of a savings and transitional nature (Part 1: clause 1); and
- (b) provisions consequent on the enactment of the proposed Act (Part 2: clauses 2–5).

Children (Criminal Proceedings) Amendment 1988

**SCHEDULE 2— AMENDMENT OF THE MISCELLANEOUS ACTS
(CHILDREN'S COURT AND CRIMINAL PROCEEDINGS) AMENDMENT ACT
1987**

Schedule 2 omits item (2) of the provisions of Schedule 1 relating to the Bail Act 1978 and makes a consequential amendment to section 2. That item, and the amendment to the Bail Act 1978 made by it, have not commenced. The amendment to the Bail Act 1978 was intended to prohibit the consent of a child from being sought or given to the remand of the child in custody for more than 8 days.

CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 1988

NEW SOUTH WALES

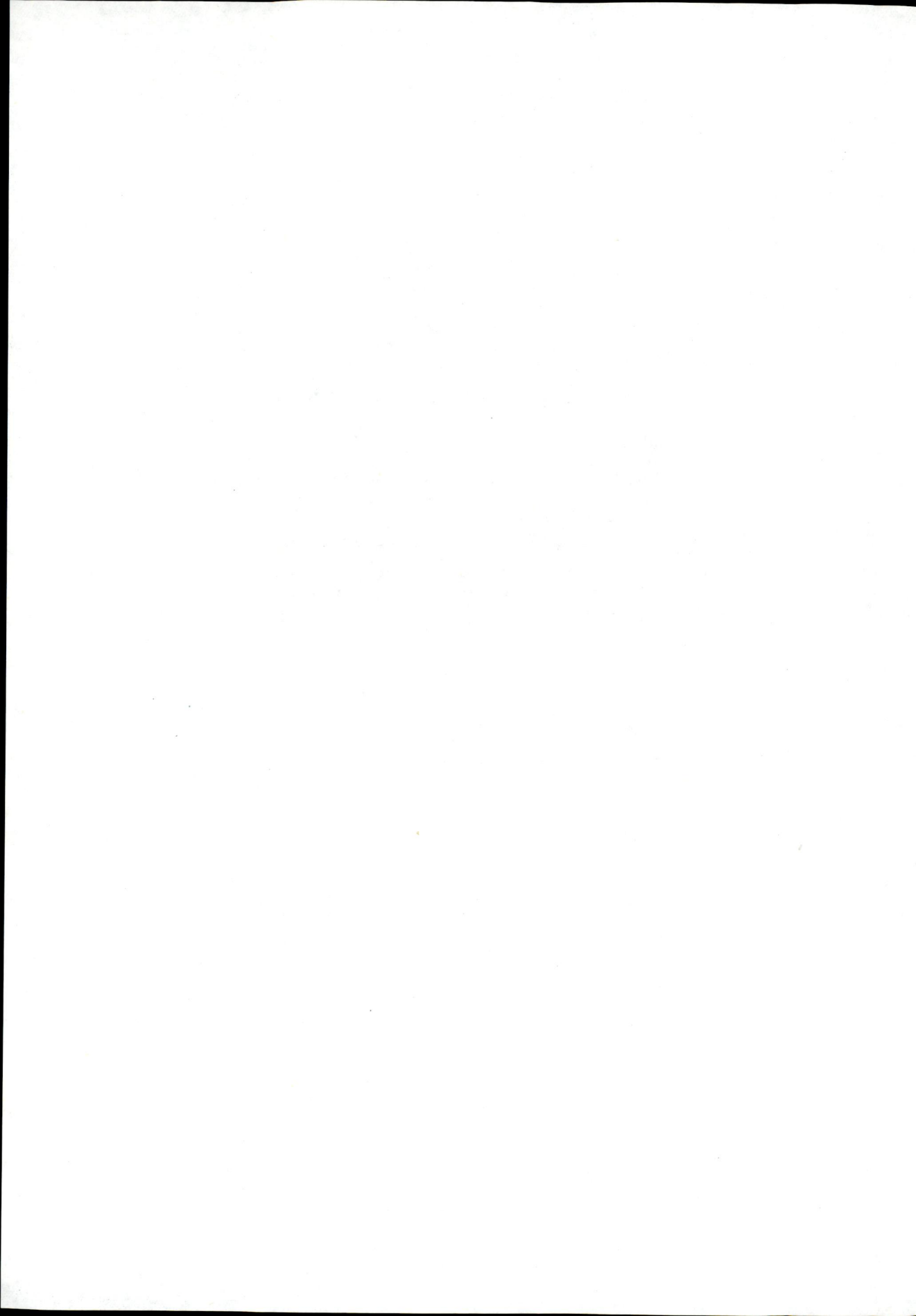


TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Children (Criminal Proceedings) Act 1987 No. 55
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SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987

SCHEDULE 2—AMENDMENT OF THE MISCELLANEOUS ACTS (CHILDREN'S COURT AND CRIMINAL PROCEEDINGS) AMENDMENT ACT 1987



**CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT
BILL 1988**

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend the Children (Criminal Proceedings) Act 1987 in relation to the remittal of cases to other courts, the publication of names of children involved in criminal proceedings, and other matters; and to amend the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987.

Children (Criminal Proceedings) Amendment 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Children (Criminal Proceedings) Amendment Act 1988.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Children (Criminal Proceedings) Act 1987 No. 55

3. The Children (Criminal Proceedings) Act 1987 is amended as set out
10 in Schedule 1.

Amendment of Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987 No. 273

4. The Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987 is amended as set out in Schedule 2.

15 SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987

(Sec. 3)

(1) Section 3 (**Definitions**)—

(a) Section 3 (1)—

20 After the definition of "Children's Court", insert:

"court" includes Justice;

(b) Section 3 (1), definitions of "parent" and "person responsible"—

Omit the definitions, insert instead:

"parent", in relation to a child, includes—

25 (a) a guardian of the child; and

(b) a person who has the lawful custody of the child,

but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child;

30 "person responsible", in relation to a child, means—

(a) a parent of the child; or

(b) a person who has the care of the child (whether or not the person has the custody of the child);

Children (Criminal Proceedings) Amendment 1988

SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

(2) Section 7 (**Jurisdiction of the Children's Court not to be exercised by Local Courts etc.**)—

(a) Section 7—

5 Omit "A Local Court may not", insert instead "Neither a Local Court nor a Justice may".

(b) Section 7 (2)—

At the end of section 7, insert:

10 (2) This section does not limit any other provision of this Act under which a Local Court or a Justice may hear and determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.

(3) Section 7A—

After section 7, insert:

Courts may rely on apparent age of defendants

15 7A. (1) For the purpose of enabling a court to determine whether or not it has jurisdiction to hear and determine criminal proceedings against a person in circumstances in which the court's jurisdiction depends on the person's age, the court may, if it is satisfied that no other evidence of the person's age is readily available, rely on the person's apparent age.

20 (2) Nothing in this section limits the operation of Part 4.

(4) Section 11 (**Publication of names etc.**)—

(a) Section 11 (4) (b)—

Omit "14" wherever occurring, insert instead "16".

25 (b) Section 11 (4) (b) (i)—

Omit "Attorney General", insert instead "court".

(c) After section 11 (4), insert:

30 (4A) The consent of the court referred to in subsection (4) (b) (i) shall not be given except with the concurrence of the child or (if the child is incapable of giving concurrence) where the court is of the opinion that the public interest so requires.

(5) Section 12 (**Courts to explain proceedings to children**)—

(a) Omit section 12 (1), insert instead:

35 (1) In any criminal proceedings against a child, a court shall take such measures as, in its opinion, are reasonably practicable to acquaint the child with the nature of the proceedings.

(b) Section 12 (2)—

Children (Criminal Proceedings) Amendment 1988

SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

Omit “if requested by the child or by some other person on behalf of the child”, insert instead “whenever in its opinion it is necessary to do so”.

(6) Section 14 (**Recording of conviction**)—

5 After “proceed to” wherever occurring, insert “, or record such a finding as,”.

(7) Section 25 (**Background reports**)—

(a) Section 25 (1) (a)—

10 After “offence” wherever occurring, insert “(other than contempt of court)”.

(b) Section 25 (2) (a), (b)—

Omit the paragraphs, insert instead:

15 (a) a background report, prepared in accordance with the regulations, has been tendered in evidence with respect to the circumstances surrounding the commission of the offence; and

(b) copies of the report have been given to the child and to any other person appearing in the proceedings; and

20 (8) Section 29 (**Jurisdiction in respect of 2 or more co-defendants who are not all children**)—

Section 29 (4) (a)—

Omit “Local Court”, insert instead “Justice”.

(9) Section 31 (**Hearing of charges in the Children’s Court**)—

(a) Section 31 (2) (b)—

25 Omit “the person informs”, insert instead “if the person informs”.

(b) Section 31 (3) (b)—

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

(c) After section 31 (4), insert:

30 (5) Notwithstanding subsection (1)—

(a) if a person is charged before the Children’s Court with an indictable offence; and

(b) if, at any stage of the proceedings, the person pleads guilty to the charge; and

*Children (Criminal Proceedings) Amendment 1988*SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

- (c) if the Children's Court is of the opinion that, having regard to all the evidence before it, the charge may not properly be disposed of in a summary manner,

5 the proceedings for the offence shall not be dealt with summarily but shall be dealt with in accordance with section 51A of the Justices Act 1902 as if the offence were a serious indictable offence in respect of which the person had pleaded guilty as referred to in that section.

- (6) Notwithstanding subsection (1)—

10 (a) if a person charged before the Children's Court with an offence (whether indictable or otherwise) was of or above the age of 18 years when so charged; and

15 (b) if the Children's Court is of the opinion, at any stage of the proceedings for the offence, that the charge ought not to be dealt with by it,

it may remit the case to a Local Court to be dealt with by that Court.

(7) If the Children's Court remits a case to a Local Court under this section, the Children's Court—

20 (a) may, subject to the Bail Act 1978, commit the defendant to custody until the defendant can appear or be brought before the Local Court; and

25 (b) shall cause to be sent to the Clerk of the Local Court all documents and depositions held by the Children's Court in relation to the case.

(8) The deposition of any witness called and examined before the Children's Court in relation to a case remitted to a Local Court under this section may be accepted as evidence for either party to the case by the Local Court if the other party consents to its being so accepted or if it is proved on oath—

30 (a) that the witness is dead, or so ill as to be unable to travel, or cannot, after such search or for such reason as to the Local Court seems sufficient, be produced by the party tendering the deposition; and

35 (b) that—

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

*Children (Criminal Proceedings) Amendment 1988*SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

- 5 (ii) in the case of a deposition that is in the form of a transcript of the record made, by a means other than writing, of the evidence of the witness—the record so made is a true record of that evidence, and was made in the presence of the other party, and the transcript is a correct transcript of the record so made; and
- (c) that the other party, or the other party's barrister or solicitor, has had full opportunity to examine the witness.
- 10 (9) A Local Court has jurisdiction to hear and determine any case that is remitted to it under this section.
- (10) In subsections (6)–(9)—
- (a) a reference to a Local Court includes a reference to a Justice; and
- 15 (b) a reference to the Clerk of a Local Court includes, in relation to a Justice, a reference to the Justice.
- (10) Section 33 (**Penalties**)—
- (a) Section 33 (2)—
- Omit “a paragraph of subsection (1)”, insert instead “subsection (1) (g)”.
- 20 (b) Section 33 (2)—
- Omit “a preceding paragraph of that subsection”, insert instead “subsection (1) (a)–(f)”.
- (11) Section 37—
- Omit the section, insert instead:
- 25 **Term of control order**
37. (1) An order under section 33 (1) (g) takes effect—
- (a) except as provided by paragraphs (b) and (c)—when it is made; or
- 30 (b) in the case of an order arising from a warrant referred to in section 5A of the Children (Community Service Orders) Act 1987—when the warrant is issued; or
- (c) in the case of an order arising from a warrant referred to in section 26A of the Children (Community Service Orders) Act 1987—when the person to whom the warrant
- 35 relates is apprehended under the warrant,
- subject to any order of the Children's Court to the contrary.

Children (Criminal Proceedings) Amendment 1988

SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

(2) An order under section 33 (1) (g) ceases to have effect at the end of the period specified in the order, subject to section 32 of the Children (Detention Centres) Act 1987.

(12) Section 39 (**Definitions**)—

5 (a) Section 39, definition of “Department”—

Omit the definition.

(b) Section 39, definition of “Director-General”—

After “Department”, insert “of Family and Community Services”.

(c) Section 39, definition of “officer”—

10 After “Department”, insert “of Family and Community Services or in the Department of Corrective Services”.

(13) Section 46 (**Procedures for remitting cases from one court to another**)—

After section 46 (2), insert:

15 (3) In this section, a reference to a clerk or other proper officer of a court includes, in relation to a Justice, a reference to the Justice.

(14) Section 52—

After section 51, insert:

Savings and transitional provisions

20 52. Schedule 2 has effect.

(15) Schedule 2—

After Schedule 1, insert:

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

25

(Sec. 52)

PART 1—GENERAL

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

30 Children (Criminal Proceedings) Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not

35 operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

Children (Criminal Proceedings) Amendment 1988

SCHEDULE 1—AMENDMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT ACT 1988
Definition

2. In this Part—

“amending Act” means the Children (Criminal Proceedings) Amendment Act 1988.

Application of amending Act to current proceedings etc.

3. (1) The amendments made by Schedule 1 (3), (5), (6), (7) and (10) to the amending Act apply to proceedings commenced before or after the commencement of those amendments.

(2) The amendment made by Schedule 1 (9) to the amending Act does not apply to proceedings commenced before the commencement of that amendment.

Consents for publication of names etc.

4. The amendments made by Schedule 1 (4) to the amending Act do not apply to any consent given under section 11 of this Act before the commencement of those amendments.

Regulations concerning background reports

5. The amendment made by Schedule 1 (7) (b) to the amending Act does not affect any regulation made for the purposes of section 25 (2) (a) of this Act and in force immediately before the commencement of that amendment.

SCHEDULE 2—AMENDMENT OF THE MISCELLANEOUS ACTS (CHILDREN’S COURT AND CRIMINAL PROCEEDINGS) AMENDMENT ACT 1987

(Sec. 4)

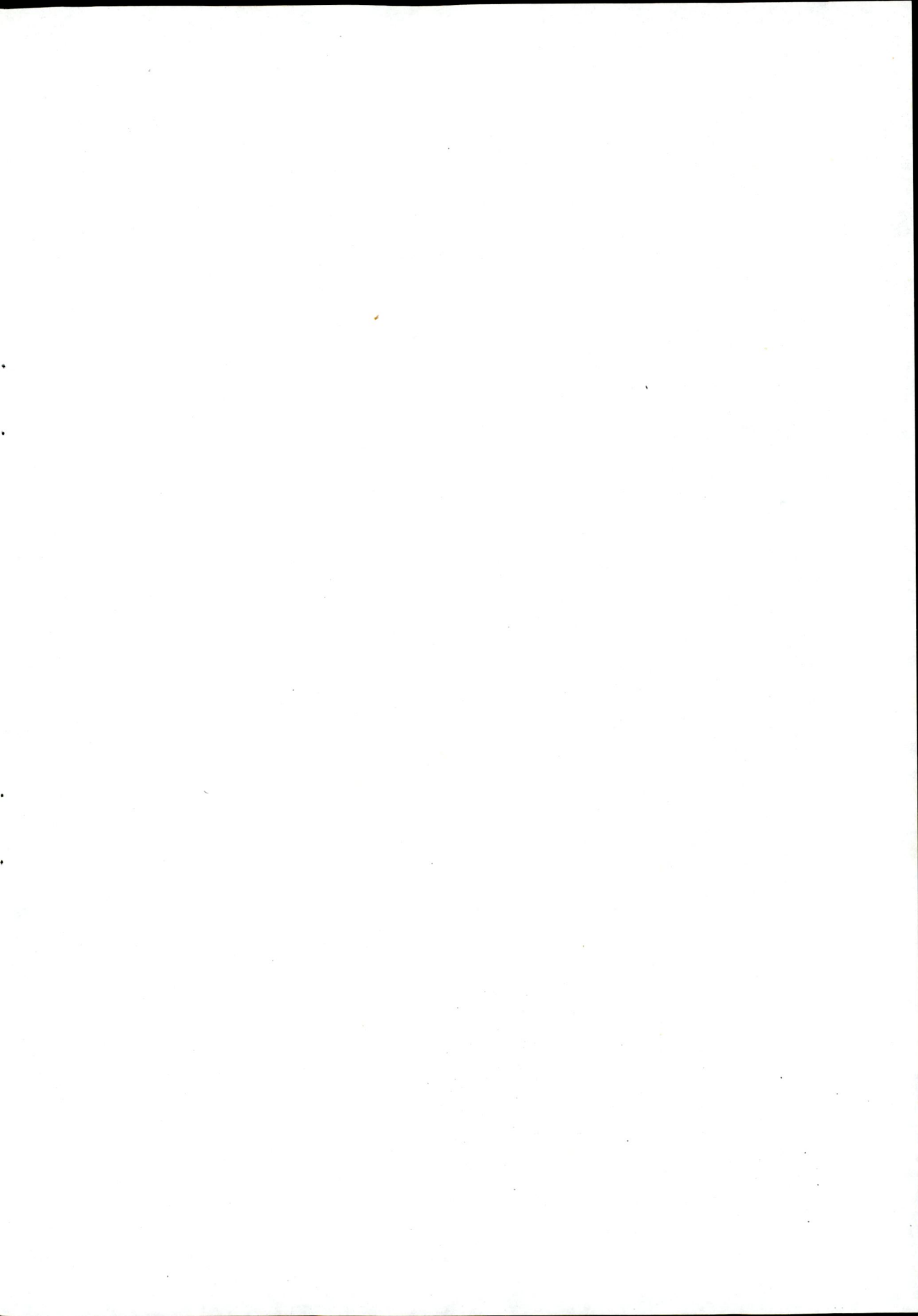
(1) Section 2 (**Commencement**)—

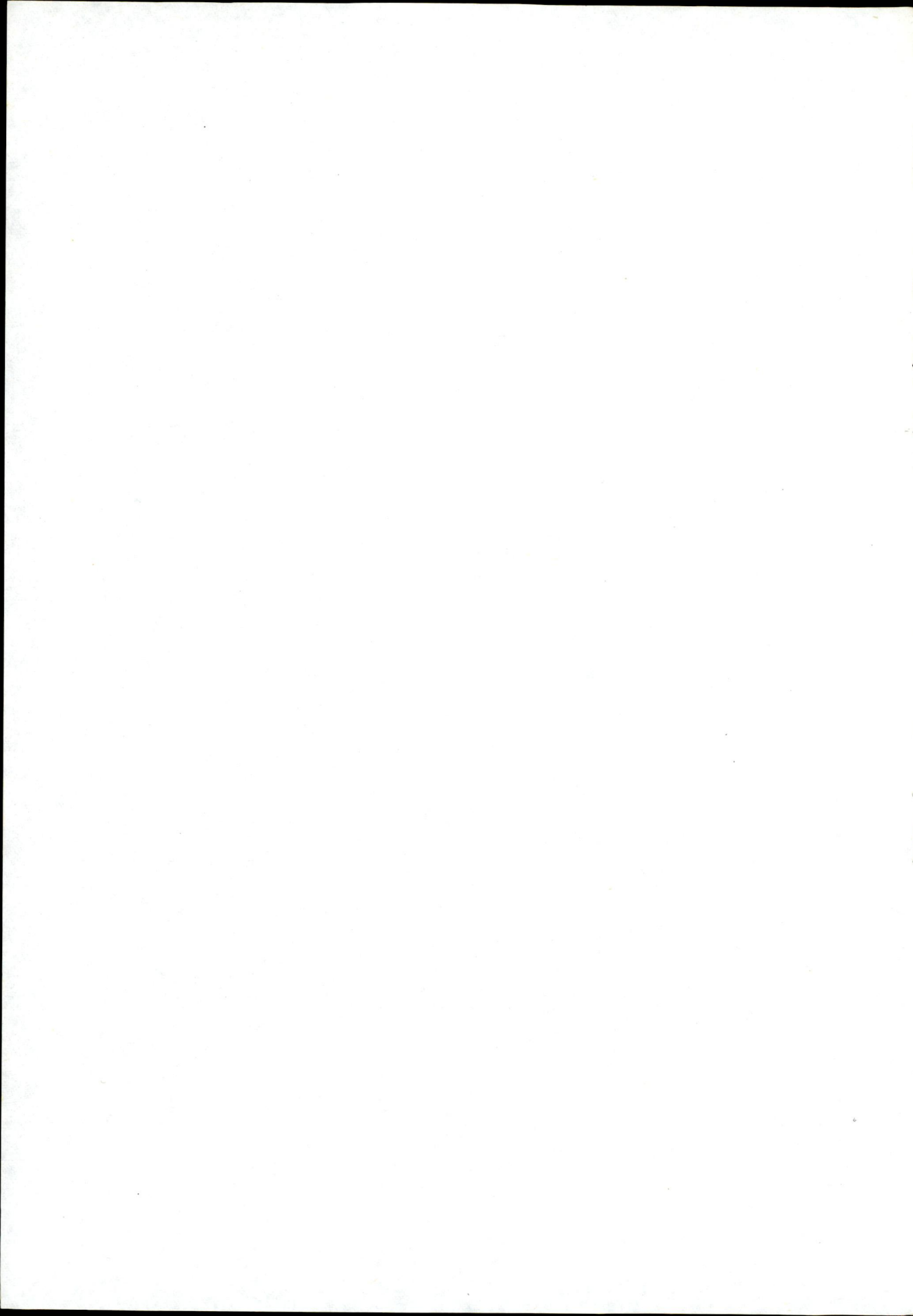
Section 2 (4)—

Omit the subsection.

(2) Schedule 1 (**Amendments**)—

Omit item (2) of the provisions of Schedule 1 relating to the Bail Act 1978.





CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL

Schedule of amendments referred to in the Legislative Council's Message of 7 December 1988

- No. 1 Page 3, Schedule 1, lines 25 to 31. Omit all words on those lines.
 - No. 2 Pages 3 and 4, Schedule 1, line 32 on page 3 down to and including line 3 on page 4. Omit all words on those lines.
 - No. 3 Pages 5 and 6, Schedule 1, line 9 on page 5 down to and including line 15 on page 6. Omit all words on those lines.
 - No. 4 Page 8, Schedule 1, line 11. Omit "(5), (6), (7) and (10)", insert instead "(5), (6) and (9)".
 - No. 5 Page 8, Schedule 1, line 14. Omit "(9)", insert instead "(8)".
 - No. 6 Page 8, Schedule 1, line 22. Omit "(7)", insert instead "(6)".
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