

## CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 1989

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 remitting 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 making of orders for the payment of compensation; and
  - (iv) the jurisdiction of the Children's Court in respect of 2 or more co-defendants who are not all children; and
  - (v) the penalties that a Children's Court may impose; and
  - (vi) the duties of a court to acquaint children against whom criminal proceedings are being taken with the nature of those proceedings; and
  - (vii) other minor matters; and
- (b) to make minor amendments to the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987.

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**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 1989*

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**SCHEDULE 1—AMENDMENT OF 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) substitutes section 7 so as to ensure that a justice or justices, as well as a Local Court, are precluded from hearing or determining criminal proceedings that the Children’s Court has jurisdiction to hear and determine (unless the Act expressly confers on them such jurisdiction).

**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”.

**Compensation orders against children under the age of 16 years**

Schedule 1 (7) substitutes section 24 so as to remove the prohibition on a court from making an order in criminal proceedings requiring a child under the age of 16 years to pay compensation.

*Children (Criminal Proceedings) Amendment 1989*

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Schedule 1 (15) amends section 36 so as to allow the Children's Court to make a compensation order under section 61 of the Victims Compensation Act 1987 against a child under the age of 16 years.

**Background reports**

Schedule 1 (8) (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 (8) (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.

**Application of Justices Act 1902 etc.**

Schedule 1 (9) substitutes section 27 to make it clear that, not only does the Justices Act 1902 apply to the Children's Court and proceedings before it, but also any other Act or law relating to Local Courts or justices.

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

Schedule 1 (10) (a) amends section 29 so as to remove the existing requirement that, where a charge is made against co-defendants who are not all subject to the jurisdiction of the Children's Court, the Children's Court must adjourn the hearing of the charge against the defendant before it if he or she does not consent to the hearing continuing while the charge against any co-defendant has yet to be determined.

Schedule 1 (10) (b) further amends section 29 by inserting a new subsection (1A) which requires the Children's Court, before continuing the hearing of a charge against a defendant in the circumstances mentioned above, to take into account certain matters, such as the wishes of the defendant and the delay in dealing with the charge which would be likely to result from an adjournment.

Schedule 1 (10) (c) amends section 29 (4) by way of statute law revision.

**Remission or hearing of charges by the Children's Court**

Schedule 1 (11) (a), (b) and (c) amend section 31 by way of statute law revision.

Schedule 1 (11) (d) amends section 31 so as to enable proceedings for 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)).

Schedule 1 (11) (d) further amends section 31 so as to enable the Children's Court, where proceedings are brought against a person who is of or above the age of 18 years, to remit those proceedings to a Local Court, or to sit as a Local Court, if the Children's Court is of the opinion that the case ought not to be dealt with by it (proposed section 31 (6)-(8)).

Schedule 1 (18) and (19) omit section 46 and insert a new section 50A, respectively, as a consequence of the proposed amendments to section 31 enabling the Children's Court to remit proceedings to a Local Court or Magistrate.

**Penalties**

Schedule 1 (12) (a) amends section 33 (1) (b) and (e) so as to empower the Children's Court to require a person to enter into a recognizance, or to release a person on probation, for a period of up to 3 years. (The period of a recognizance or probation is currently restricted to 1 year.)

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Schedule 1 (12) (b) and (c) further amend 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. Schedule 1 (14) makes a consequential amendment to section 35.

**Cumulative or concurrent control orders**

Schedule 1 (13) inserts a new section 33A to provide for the circumstances in which the Children's Court may make orders under section 33 (1) (g) committing a person to the control of the Minister administering the Children (Detention Centres) Act 1987 that take effect consecutively, rather than concurrently. The proposed section will preclude the Court from making control orders if, as a consequence, a person would be required to be detained in a detention centre for more than 3 years. Schedule 1 (21) makes a consequential amendment to Schedule 1 to the Act.

**Term of control order**

Schedule 1 (16) 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 (17) 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.

**Savings and transitional provisions**

Schedule 1 (20) inserts a new section 52. The proposed section gives effect to the proposed Schedule 2.

Schedule 1 (22) 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).

**SCHEDULE 2—AMENDMENT OF 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.

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# CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 1989

NEW SOUTH WALES



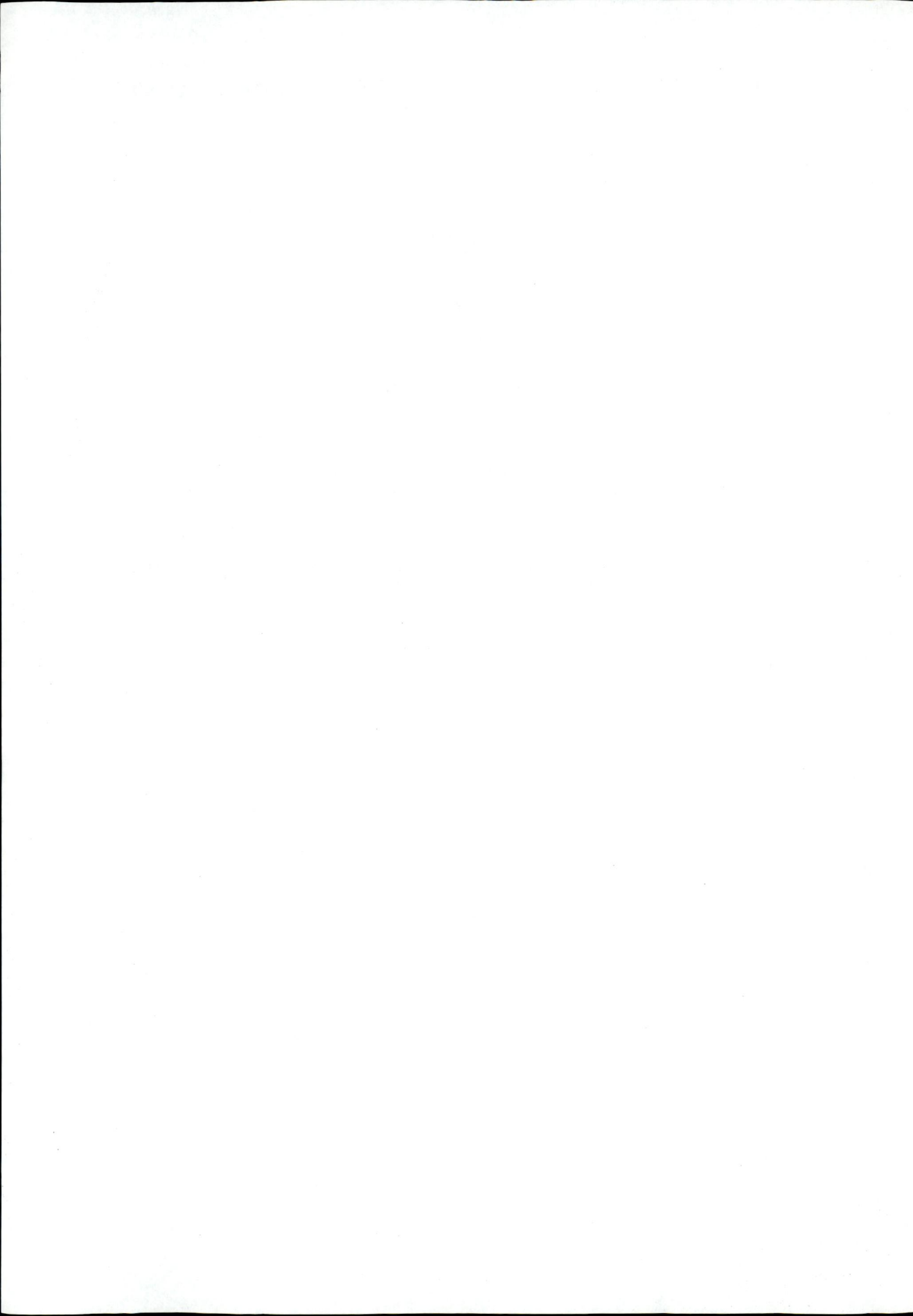
## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Children (Criminal Proceedings) Act 1987 No. 55
4. Amendment of Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987 No. 273

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

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

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# CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 1989

NEW SOUTH WALES



No. , 1989

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## A BILL FOR

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

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*Children (Criminal Proceedings) Amendment 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Children (Criminal Proceedings) Amendment Act 1989.

**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 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 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 (whether or not the justice is a Children's Magistrate or a Magistrate);

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

Omit the definitions, insert instead:

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

(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;

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"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);



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

## (2) Section 7—

Omit the section, insert instead:

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

- 5           7. Except as provided by this Act, neither a Local Court nor a justice or justices may hear and determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.

## (3) Section 7A—

After section 7, insert:

10           **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 apparent age of the person.

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

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

(a) Section 11 (4) (b)—

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

(b) Section 11 (4) (b) (i)—

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

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

- 25           (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:

- 30           (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)—

- 35           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".

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

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

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

(7) Section 24—

5 Omit the section, insert instead:

**Compensation**

24. A court shall have regard to the child’s means and income (if any) when deciding—

- 10 (a) whether or not to require a child to pay any compensation, whether under a condition of a recognizance or otherwise; or
- (b) the amount of any compensation required to be paid by a child.

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

15 (a) Section 25 (1) (a)—

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

(b) Section 25 (2) (a), (b)—

Omit the paragraphs, insert instead:

- 20 (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
- 25 (b) copies of the report have been given to the child and any other person appearing in the proceedings; and

(9) Section 27—

Omit section 27, insert instead:

**Application of Justices Act 1902 etc.**

30 27. (1) Subject to Part 2 and to the rules of the Children’s Court, any Act or other law relating to the functions of Local Courts, Magistrates or justices or to criminal proceedings before them applies to—

- (a) the Children’s Court; and
- (b) any criminal proceedings before the Children’s Court.
- 35 (2) In particular (and subject to Part 2 and to the rules of the Children’s Court), the Justices Act 1902 applies to the Children’s Court and any criminal proceedings before the Children’s Court.

*Children (Criminal Proceedings) Amendment 1989*SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

(3) If this Part and any Act or other law applied by this section (other than the Bail Act 1978) are inconsistent, this Part shall prevail to the extent of the inconsistency.

- 5 (10) Section 29 (**Jurisdiction in respect of 2 or more co-defendants who are not all children**)—
- (a) Omit section 29 (1) (d), insert instead:
- (d) may continue the hearing of the charge against the person in respect of whom it has jurisdiction without any such adjournment.
- 10 (b) After section 29 (1), insert:
- (1A) In deciding whether to continue the hearing of a charge against a person, the Children's Court shall have regard to the following particular matters:
- 15 (a) whether or not the person wishes the hearing of the charge by the Court to continue;
- (b) whether or not the person has been released on bail under the Bail Act 1978;
- (c) the delay in the hearing of the charge that would be likely to result from an adjournment of the hearing;
- 20 (d) whether or not to continue hearing the charge is in the interests of justice,
- and any other matter that the Court considers relevant.
- (c) Section 29 (4) (a)—
- Omit "Local Court", insert instead "Magistrate".
- 25 (11) Section 31 (**Hearing of charges in the Children's Court**)—
- (a) Section 31 (2) (b)—
- Omit "the person informs", insert instead "if the person informs".
- (b) Section 31 (3) (a)—
- 30 Omit "(other than an offence that is punishable summarily without the consent of the accused)".
- (c) Section 31 (3) (b)—
- Omit "the Children's Court is", insert instead "if the Children's Court states that it is".
- (d) After section 31 (4), insert:
- 35 (5) Notwithstanding subsection (1)—
- (a) if a person is charged before the Children's Court with an indictable offence; and

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

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

(c) if the Children's Court states that it 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,

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)—

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

(b) if the Children's Court states at any time, but no later than at the close of the case for the prosecution, that it is of the opinion that the proceedings ought to be dealt with under this subsection,

then—

(c) to the extent that the charge could be dealt with by a Local Court or by a Magistrate if it had been laid against an adult, the Children's Court may continue to deal with the proceedings and, for that purpose, shall have, and may exercise, the jurisdiction of a Local Court or a Magistrate, as the case may require; or

(d) the Children's Court may remit the proceedings to a Local Court or Magistrate to be dealt with by that Court or Magistrate.

(7) If proceedings are dealt with under subsection (6) (c)—

(a) the proceedings are to be taken to be proceedings before, and the Children's Magistrate dealing with them is to be taken to be, a Local Court or Magistrate (as the case may require); and

(b) any evidence accepted by the Children's Magistrate is to be taken to be evidence accepted by the Local Court or Magistrate.

(8) If proceedings are remitted under this section to a Local Court or Magistrate, the Local Court or Magistrate has jurisdiction to hear and determine the proceedings.

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

- (12) Section 33 (**Penalties**)—
- (a) Section 33 (1) (b), (e)—  
Omit “12 months” wherever occurring, insert instead “3 years”.
- (b) Section 33 (2)—  
5 Omit “a paragraph of subsection (1)”, insert instead “subsection (1) (g)”.
- (c) Section 33 (2)—  
Omit “a preceding paragraph of that subsection”, insert instead “subsection (1) (a)–(f)”.
- 10 (13) Section 33A—  
After section 33, insert:  
**Cumulative or concurrent orders etc.**  
33A. (1) In this section, “control order” means an order referred to in section 33 (1) (g).
- 15 (2) Unless a direction is given under this section, the period for which a person is required to be detained under a control order commences when the order takes effect.
- (3) If the Children’s Court so directs, the period for which a person is required to be detained under a control order commences when the period for which the person is required to be detained under another control order expires.
- 20 (4) The Children’s Court must not make a control order or give a direction under this section if the order or direction would have the effect of requiring a person—
- 25 (a) to be subject at any time to control orders requiring the person to be detained for more than 3 years (taking into account any period for which the person has already been detained under a control order to which the person is still subject); or
- 30 (b) to be detained for more than 2 periods specified in different control orders, being periods that are not to any extent concurrent.
- (14) Section 35 (**Reasons for decision to be given**)—
- (a) Section 35—  
35 Omit “under a paragraph of section 33 (1)”, insert instead “under section 33 (1) (g)”.
- (b) Section 35 (b)—

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

Omit “any of the preceding paragraphs of section 33 (1)”, insert instead “under section 33 (1) (a)–(f)”.

(15) Section 36 (**Compensation**)—

(a) Section 36 (1)—

5 Omit “in respect of a person who is of or above the age of 16 years”.

(b) Section 36 (2)—

Omit “financial means”, insert instead “means and income, if any”.

10 (16) Section 37—

Omit the section, insert instead:

**Term of control order**

37. (1) An order under section 33 (1) (g) takes effect—

15 (a) except as provided by paragraphs (b) and (c)—when it is made; or

(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

20 (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 relates is apprehended under the warrant.

25 (2) Notwithstanding subsection (1), if the Children’s Court orders that a control order takes effect at a specified time, the order takes effect at the specified time.

(3) 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.

(17) Section 39 (**Definitions**)—

30 (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”—

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

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

(18) Section 46 (**Procedures for remitting cases from one court to another**)—  
Omit the section.

(19) Section 50A—

After section 50, insert:

5       **Procedures for remitting cases from one court to another**

50A. (1) A court that under this Act remits proceedings to another court—

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

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

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

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

(b) that—

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

30       (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.

35 (20) Section 52—

After section 51, insert:

**Savings and transitional provisions**

52. Schedule 2 has effect.

*Children (Criminal Proceedings) Amendment 1989*


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**SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—continued**
**(21) Schedule 1 (Modifications of the Probation and Parole Act 1983)—**

(a) Clause 1 (e)—

After “1987;”, insert “and”.

(b) Clause 1 (f), (g)—

5 Omit the paragraphs, insert instead:

(f) a reference to the governor of a prison were a reference to the superintendent of a detention centre within the meaning of the Children (Detention Centres) Act 1987.

**(22) Schedule 2—**

10 After Schedule 1, insert:

**SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 52)

**PART 1—GENERAL****Savings and transitional regulations**

15 1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Children (Criminal Proceedings) Amendment Act 1989.

(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.

20 (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 operate so as—

25 (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

(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 1989**

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**Definition**

2. In this Part—

“amending Act” means the Children (Criminal Proceedings) Amendment Act 1989.

**Application of amending Act to current proceedings etc.**

35 3. (1) An amendment made to this Act by Schedule 1 (3), (5), (6), (8), (12) (b) or (c) or (14) to the amending Act apply to proceedings pending at or commenced after the amendment commences.

40 (2) An amendment made to this Act by Schedule 1 (7), (10) (a) or (b), (11), (12) (a), (15) or (21) to the amending Act does not apply to proceedings commenced before the amendment commences.



*Children (Criminal Proceedings) Amendment 1989*

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

(3) An amendment made by Schedule 1 (13) to the amending Act does not apply to a control order made before the amendment commences.

**Consents for publication of names etc.**

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

**Regulations concerning background reports**

10 5. The amendment made to this Act by Schedule 1 (8) (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 that amendment commences.

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

(Sec. 4)

15 (1) Section 2 (**Commencement**)—

Section 2 (4)—

Omit the subsection.

(2) Schedule 1 (**Amendments**)—

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

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# CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 1989

NEW SOUTH WALES



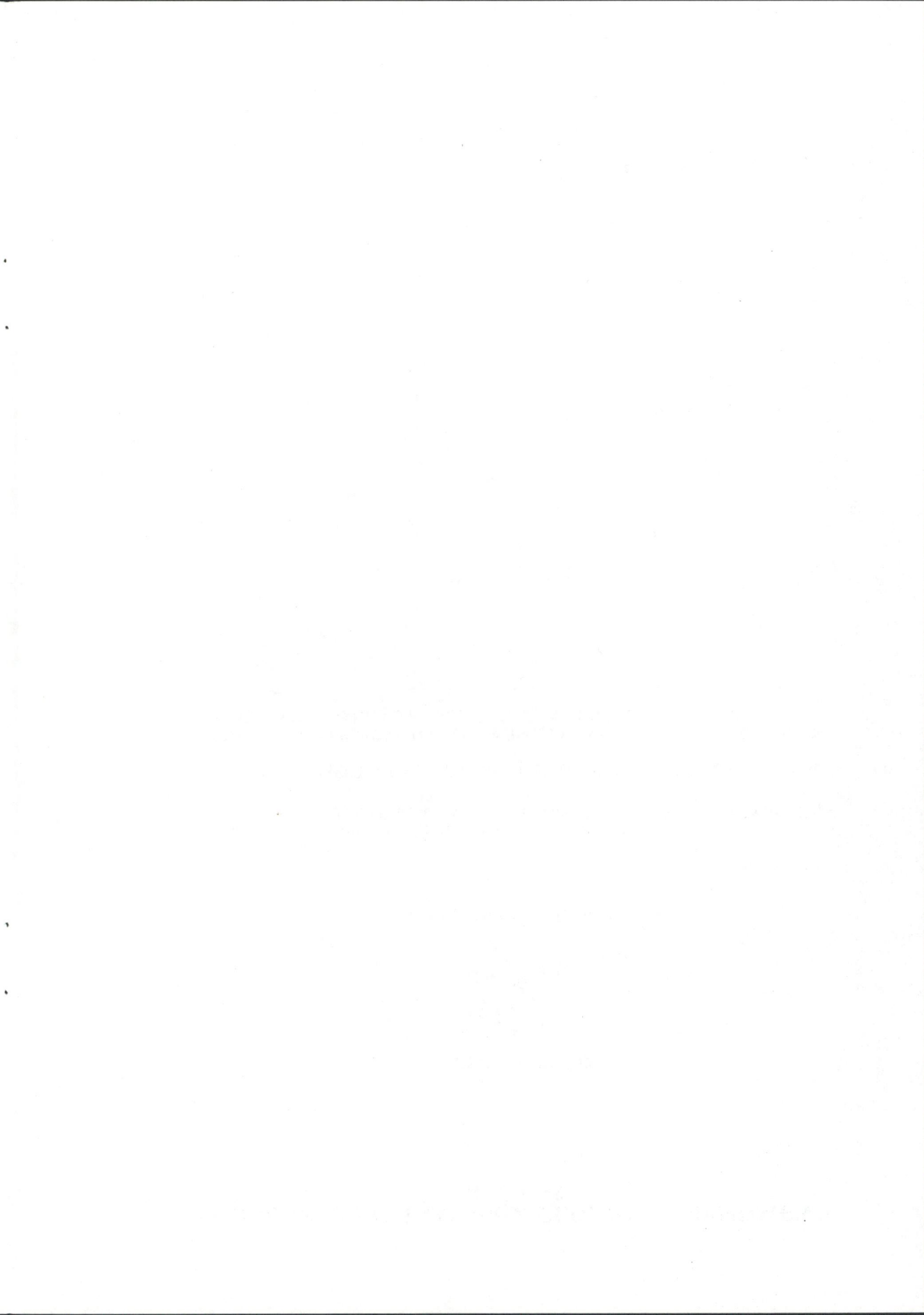
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SCHEDULE 2—AMENDMENT OF MISCELLANEOUS ACTS (CHILDREN'S COURT AND CRIMINAL PROCEEDINGS) AMENDMENT ACT 1987

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*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, , 1989*

NEW SOUTH WALES



**Act No. , 1989**

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

*Children (Criminal Proceedings) Amendment 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Children (Criminal Proceedings) Amendment Act 1989.

**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 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.

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**15 SCHEDULE 1—AMENDMENT OF 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 (whether or not the justice is a Children's Magistrate or a Magistrate);

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

Omit the definitions, insert instead:

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

(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;

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"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 1989*


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

## (2) Section 7—

Omit the section, insert instead:

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

- 5           7. Except as provided by this Act, neither a Local Court nor a justice or justices may hear and determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.

## (3) Section 7A—

After section 7, insert:

10           **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 apparent age of the person.

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

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

## (a) Section 11 (4) (b)—

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

## (b) Section 11 (4) (b) (i)—

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

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

- 25           (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—

Omit the section, insert instead:

30           **Proceedings to be explained to children**

12. (1) If criminal proceedings are brought against a child, the following matters shall be explained to the child:

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

*Children (Criminal Proceedings) Amendment 1989*

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

(2) Until those matters have been explained to the child, the court before which the proceedings are brought shall not proceed further.

(3) The Children's Court shall, if requested by the child or by

(a) any aspect of the procedure of the Children's Court; and

(b) any decision or ruling made by the Children's Court,

in or in relation to the proceedings.

(4) A court shall give the child the fullest opportunity practicable to be heard, and to participate, in the proceedings.

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

After "proceed to" wherever occurring, insert ", or record such a finding as,".

(7) Section 24—

Omit the section, insert instead:

**Compensation**

24. A court shall have regard to the child's means and income (if any), and the child's ability to comply with any requirement relating to the payment of compensation, when deciding—

(a) whether or not to require a child to pay any compensation, whether under a condition of a recognizance or otherwise; or

(b) the amount of any compensation required to be paid by a child.

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

(a) Section 25 (1) (a)—

After "offence" wherever occurring, insert "(other than contempt of court)".

(b) Section 25 (2) (a), (b)—

Omit the paragraphs, insert instead:

(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 any other person appearing in the proceedings; and

*Children (Criminal Proceedings) Amendment 1989*

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

(9) Section 27—

Omit section 27, insert instead:

**Application of Justices Act 1902 etc.**

5 27. (1) Subject to Part 2 and to the rules of the Children's Court, any Act or other law relating to the functions of Local Courts, Magistrates or justices or to criminal proceedings before them applies to—

(a) the Children's Court; and

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

10 (2) In particular (and subject to Part 2 and to the rules of the Children's Court), the Justices Act 1902 applies to the Children's Court and any criminal proceedings before the Children's Court.

15 (3) If this Part and any Act or other law applied by this section (other than the Bail Act 1978) are inconsistent, this Part shall prevail to the extent of the inconsistency.

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

(a) Omit section 29 (1) (d), insert instead:

20 (d) may continue the hearing of the charge against the person in respect of whom it has jurisdiction without any such adjournment.

(b) After section 29 (1), insert:

25 (1A) In deciding whether to continue the hearing of a charge against a person, the Children's Court shall have regard to the following particular matters:

(a) whether or not the person wishes the hearing of the charge by the Court to continue;

(b) whether or not the person has been released on bail under the Bail Act 1978;

30 (c) the delay in the hearing of the charge that would be likely to result from an adjournment of the hearing;

(d) whether or not to continue hearing the charge is in the interests of justice,

and any other matter that the Court considers relevant.

35 (c) Section 29 (4) (a)—

Omit "Local Court", insert instead "Magistrate".

*Children (Criminal Proceedings) Amendment 1989*SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*(11) Section 31 (**Hearing of charges in the Children's Court**)—

## (a) Section 31 (2) (b)—

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

## (b) Section 31 (3) (a)—

5 Omit “(other than an offence that is punishable summarily without the consent of the accused)”.

## (c) Section 31 (3) (b)—

Omit “the Children's Court is”, insert instead “if the Children's Court states that it is”.

## 10 (d) After section 31 (4), insert:

## (5) Notwithstanding subsection (1)—

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

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

(c) if the Children's Court states that it 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,

20 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)—

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

30 (b) if the Children's Court states at any time, but no later than at the close of the case for the prosecution, that it is of the opinion that the proceedings ought to be dealt with under this subsection,

then—

35 (c) to the extent that the charge could be dealt with by a Local Court or by a Magistrate if it had been laid against an adult, the Children's Court may continue to deal with the proceedings and, for that purpose, shall have, and may exercise, the jurisdiction of a Local Court or a Magistrate, as the case may require; or

*Children (Criminal Proceedings) Amendment 1989*

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

- (d) the Children's Court may remit the proceedings to a Local Court or Magistrate to be dealt with by that Court or Magistrate.
- (7) If proceedings are dealt with under subsection (6) (c)—
- 5 (a) the proceedings are to be taken to be proceedings before, and the Children's Magistrate dealing with them is to be taken to be, a Local Court or Magistrate (as the case may require); and
- 10 (b) any evidence accepted by the Children's Magistrate is to be taken to be evidence accepted by the Local Court or Magistrate.
- (8) If proceedings are remitted under this section to a Local Court or Magistrate, the Local Court or Magistrate has jurisdiction to hear and determine the proceedings.
- 15 (12) Section 33 (**Penalties**)—
- (a) Section 33 (1) (b), (e)—  
Omit "12 months" wherever occurring, insert instead "2 years".
- (b) Section 33 (2)—  
20 Omit "a paragraph of subsection (1)", insert instead "subsection (1) (g)".
- (c) Section 33 (2)—  
Omit "a preceding paragraph of that subsection", insert instead "subsection (1) (a)–(f)".
- (13) Section 33A—
- 25 After section 33, insert:  
**Cumulative or concurrent orders etc.**
- 33A. (1) In this section, "control order" means an order referred to in section 33 (1) (g).
- (2) Unless a direction is given under this section, the period for which a person is required to be detained under a control order commences when the order takes effect.
- 30 (3) If the Children's Court so directs, the period for which a person is required to be detained under a control order commences when the period for which the person is required to be detained under another control order expires.
- 35 (4) The Children's Court must not make a control order or give a direction under this section if the order or direction would have the effect of requiring a person—

*Children (Criminal Proceedings) Amendment 1989*

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

5 (a) to be subject at any time to control orders requiring the person to be detained for more than 3 years (taking into account any period for which the person has already been detained under a control order to which the person is still subject); or

(b) to be detained for more than 2 periods specified in different control orders, being periods that are not to any extent concurrent.

(14) Section 35 (**Reasons for decision to be given**)—

10 (a) Section 35—

Omit “under a paragraph of section 33 (1)”, insert instead “under section 33 (1) (g)”.

(b) Section 35 (b)—

15 Omit “any of the preceding paragraphs of section 33 (1)”, insert instead “under section 33 (1) (a)–(f)”.

(15) Section 36 (**Compensation**)—

(a) Section 36 (1)—

Omit “in respect of a person who is of or above the age of 16 years”.

20 (b) Section 36 (2)—

Omit “financial means”, insert instead “means and income, if any”.

(16) 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

35 (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 relates is apprehended under the warrant.

(2) Notwithstanding subsection (1), if the Children’s Court orders that a control order takes effect at a specified time, the order takes effect at the specified time.

*Children (Criminal Proceedings) Amendment 1989*


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

(3) 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.

(17) 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”.

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

Omit the section.

(19) Section 50A—

15 After section 50, insert:

**Procedures for remitting cases from one court to another**

50A. (1) A court that under this Act remits proceedings to another 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 other court; and

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

25 (2) The deposition of any witness called and examined before a court that remits proceedings to another court may be accepted as evidence for the accused or the prosecution by the other 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 other court seems sufficient, be produced by the party tendering the deposition; and

(b) that—

35 (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 1989***SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued***

(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.

(20) Section 52—

After section 51, insert:

**Savings and transitional provisions**

52. Schedule 2 has effect.

(21) Schedule 1 (**Modifications of the Probation and Parole Act 1983**)—

(a) Clause 1 (e)—

After "1987;" insert "and".

(b) Clause 1 (f), (g)—

Omit the paragraphs, insert instead:

(f) a reference to the governor of a prison were a reference to the superintendent of a detention centre within the meaning of the Children (Detention Centres) Act 1987.

(22) Schedule 2—

After Schedule 1, insert:

**SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS**

(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:

Children (Criminal Proceedings) Amendment Act 1989.

(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 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 1989***SCHEDULE 1—AMENDMENT OF 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 1989****Definition**

2. In this Part—

“amending Act” means the Children (Criminal Proceedings) Amendment Act 1989.

**Application of amending Act to current proceedings etc.**

3. (1) An amendment made to this Act by Schedule 1 (3), (5), (6), (8), (12) (b) or (c) or (14) to the amending Act apply to proceedings pending at or commenced after the amendment commences.

(2) An amendment made to this Act by Schedule 1 (7), (10) (a) or (b), (11), (12) (a), (15) or (21) to the amending Act does not apply to proceedings commenced before the amendment commences.

(3) An amendment made by Schedule 1 (13) to the amending Act does not apply to a control order made before the amendment commences.

**Consents for publication of names etc.**

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

**Regulations concerning background reports**

5. The amendment made to this Act by Schedule 1 (8) (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 that amendment commences.

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

(Sec. 4)

(1) Section 2 (**Commencement**)—

Section 2 (4)—

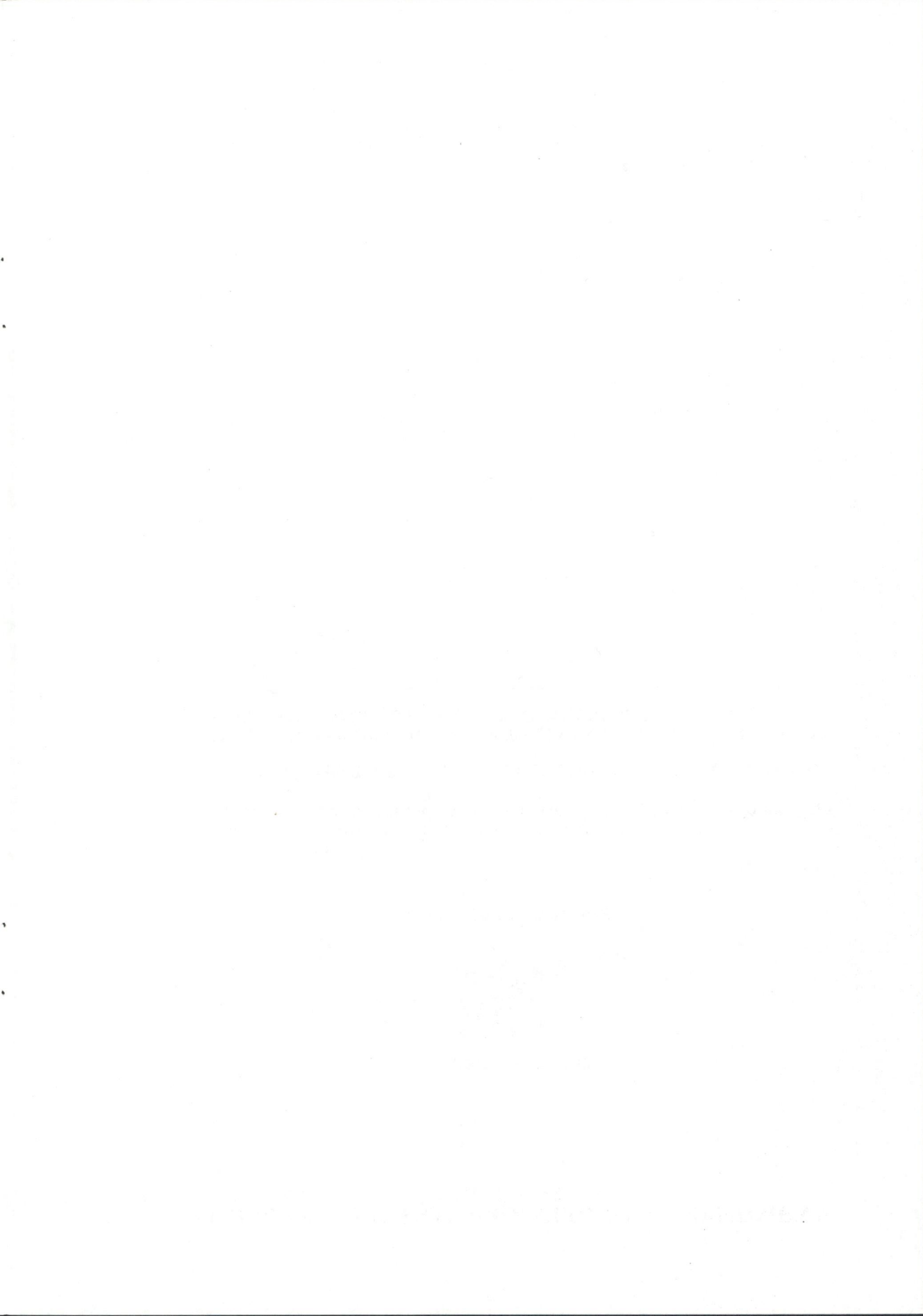
Omit the subsection.

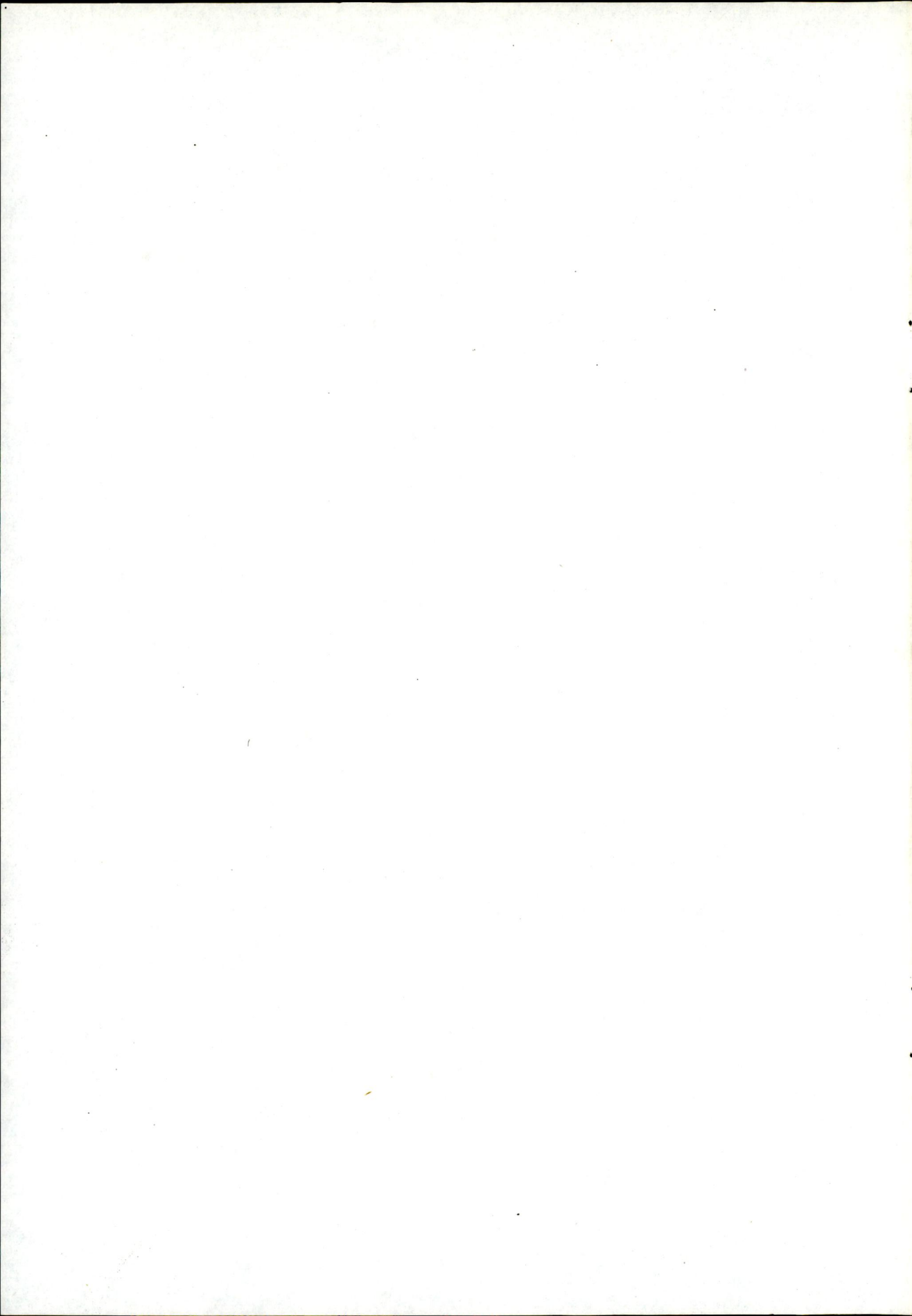
(2) Schedule 1 (**Amendments**)—

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

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BY AUTHORITY  
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1989





**CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT  
ACT 1989 No. 75**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

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

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

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**CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT ACT 1989**  
**No. 75**

NEW SOUTH WALES



**Act No. 75, 1989**

An Act to amend the Children (Criminal Proceedings) Act 1987 in relation to the remitting of cases to other courts, the publication of names of children involved in criminal proceedings, the making of compensation orders, the imposing of penalties and other matters; and to amend the Miscellaneous Acts (Children's Court and Criminal Proceedings) Amendment Act 1987.  
[Assented to 2 June 1989]

*Children (Criminal Proceedings) Amendment 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Children (Criminal Proceedings) Amendment Act 1989.

**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 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.

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

(Sec. 3)

(1) Section 3 (**Definitions**)—

(a) Section 3 (1)—

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

"court" includes justice (whether or not the justice is a Children's Magistrate or a Magistrate);

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

Omit the definitions, insert instead:

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

(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;

"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 1989*

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

(2) Section 7—

Omit the section, insert instead:

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

7. Except as provided by this Act, neither a Local Court nor a justice or justices 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**

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 apparent age of the person.

(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".

(b) Section 11 (4) (b) (i)—

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

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

(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—

Omit the section, insert instead:

**Proceedings to be explained to children**

12. (1) If criminal proceedings are brought against a child, the following matters shall be explained to the child:

(a) the nature of any allegations made against the child; and

(b) the facts that must be established before the child can be found guilty of the offence with which the child is charged.

*Children (Criminal Proceedings) Amendment 1989*

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

- (2) Until those matters have been explained to the child, the court before which the proceedings are brought shall not proceed further.
- (3) The Children's Court shall, if requested by the child or by some other person on behalf of the child, explain to the child—
- (a) any aspect of the procedure of the Children's Court; and
  - (b) any decision or ruling made by the Children's Court, in or in relation to the proceedings.
- (4) A court shall give the child the fullest opportunity practicable to be heard, and to participate, in the proceedings.
- (6) Section 14 (**Recording of conviction**)—
- After "proceed to" wherever occurring, insert ", or record such a finding as,".
- (7) Section 24—
- Omit the section, insert instead:
- Compensation**
24. A court shall have regard to the child's means and income (if any), and the child's ability to comply with any requirement relating to the payment of compensation, when deciding—
- (a) whether or not to require a child to pay any compensation, whether under a condition of a recognizance or otherwise; or
  - (b) the amount of any compensation required to be paid by a child.
- (8) Section 25 (**Background reports**)—
- (a) Section 25 (1) (a)—
- After "offence" wherever occurring, insert "(other than contempt of court)".
- (b) Section 25 (2) (a), (b)—
- Omit the paragraphs, insert instead:
- (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 any other person appearing in the proceedings; and

*Children (Criminal Proceedings) Amendment 1989*


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

## (9) Section 27—

Omit section 27, insert instead:

**Application of Justices Act 1902 etc.**

27. (1) Subject to Part 2 and to the rules of the Children's Court, any Act or other law relating to the functions of Local Courts, Magistrates or justices or to criminal proceedings before them applies to—

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

(2) In particular (and subject to Part 2 and to the rules of the Children's Court), the Justices Act 1902 applies to the Children's Court and any criminal proceedings before the Children's Court.

(3) If this Part and any Act or other law applied by this section (other than the Bail Act 1978) are inconsistent, this Part shall prevail to the extent of the inconsistency.

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

(a) Omit section 29 (1) (d), insert instead:

(d) may continue the hearing of the charge against the person in respect of whom it has jurisdiction without any such adjournment.

(b) After section 29 (1), insert:

(1A) In deciding whether to continue the hearing of a charge against a person, the Children's Court shall have regard to the following particular matters:

- (a) whether or not the person wishes the hearing of the charge by the Court to continue;
- (b) whether or not the person has been released on bail under the Bail Act 1978;
- (c) the delay in the hearing of the charge that would be likely to result from an adjournment of the hearing;
- (d) whether or not to continue hearing the charge is in the interests of justice,

and any other matter that the Court considers relevant.

(c) Section 29 (4) (a)—

Omit "Local Court", insert instead "Magistrate".

*Children (Criminal Proceedings) Amendment 1989*SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*

- (11) Section 31 (**Hearing of charges in the Children's Court**)—
- (a) Section 31 (2) (b)—  
Omit “the person informs”, insert instead “if the person informs”.
- (b) Section 31 (3) (a)—  
Omit “(other than an offence that is punishable summarily without the consent of the accused)”.
- (c) Section 31 (3) (b)—  
Omit “the Children's Court is”, insert instead “if the Children's Court states that it is”.
- (d) After section 31 (4), insert:
- (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
- (c) if the Children's Court states that it 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,
- 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.
- (12) Section 33 (**Penalties**)—
- (a) Section 33 (1) (b), (e)—  
Omit “12 months” wherever occurring, insert instead “2 years”.
- (b) Section 33 (2)—  
Omit “a paragraph of subsection (1)”, insert instead “subsection (1) (g)”.
- (c) Section 33 (2)—  
Omit “a preceding paragraph of that subsection”, insert instead “subsection (1) (a)–(f)”.
- (13) Section 33A—  
After section 33, insert:
- Cumulative or concurrent orders etc.**
- 33A. (1) In this section, “control order” means an order referred to in section 33 (1) (g).

*Children (Criminal Proceedings) Amendment 1989*

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

(2) Unless a direction is given under this section, the period for which a person is required to be detained under a control order commences when the order takes effect.

(3) If the Children's Court so directs, the period for which a person is required to be detained under a control order commences when the period for which the person is required to be detained under another control order expires.

(4) The Children's Court must not make a control order or give a direction under this section if the order or direction would have the effect of requiring a person—

(a) to be subject at any time to control orders requiring the person to be detained for more than 3 years (taking into account any period for which the person has already been detained under a control order to which the person is still subject); or

(b) to be detained for more than 2 periods specified in different control orders, being periods that are not to any extent concurrent.

(14) Section 35 (**Reasons for decision to be given**)—

(a) Section 35—

Omit “under a paragraph of section 33 (1)”, insert instead “under section 33 (1) (g)”.

(b) Section 35 (b)—

Omit “any of the preceding paragraphs of section 33 (1)”, insert instead “under section 33 (1) (a)–(f)”.

(15) Section 36 (**Compensation**)—

(a) Section 36 (1)—

Omit “in respect of a person who is of or above the age of 16 years”.

(b) Section 36 (2)—

Omit “financial means”, insert instead “means and income, if any”.

(16) Section 37—

Omit the section, insert instead:

**Term of control order**

37. (1) An order under section 33 (1) (g) takes effect—

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

- (a) except as provided by paragraphs (b) and (c)—when it is made; or
  - (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 relates is apprehended under the warrant.
- (2) Notwithstanding subsection (1), if the Children's Court orders that a control order takes effect at a specified time, the order takes effect at the specified time.
- (3) 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.
- (17) Section 39 (**Definitions**)—
- (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"—  
After "Department", insert "of Family and Community Services or in the Department of Corrective Services".
- (18) Section 46 (**Procedures for remitting cases from one court to another**)—  
Omit the section.
- (19) Section 50A—  
After section 50, insert:
- Procedures for remitting cases from one court to another**
- 50A. (1) A court that under this Act remits proceedings to another court—
- (a) may, subject to the Bail Act 1978, commit the defendant to custody until the defendant can appear or be brought before the other court; and
  - (b) shall cause to be sent to the clerk of the other court or other proper officer all documents and depositions held by the firstmentioned court in relation to the proceedings.

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

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

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

(b) that—

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

(ii) in the case of a deposition that is in the form of a transcript of the record made, by a means other than writing, of the evidence of the witness—the record so made is a true record of that evidence, and was made in the presence of the other party, and the transcript is a correct transcript of the record so made; and

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

(20) Section 52—

After section 51, insert:

**Savings and transitional provisions**

52. Schedule 2 has effect.

(21) Schedule 1 (**Modifications of the Probation and Parole Act 1983**)—

(a) Clause 1 (e)—

After “1987;”, insert “and”.

(b) Clause 1 (f), (g)—

Omit the paragraphs, insert instead:

(f) a reference to the governor of a prison were a reference to the superintendent of a detention centre within the meaning of the Children (Detention Centres) Act 1987.

(22) Schedule 2—

After Schedule 1, insert:

**SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 52)

**PART 1—GENERAL**

*Children (Criminal Proceedings) Amendment 1989***SCHEDULE 1—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—*continued*****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:

Children (Criminal Proceedings) Amendment Act 1989.

(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 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
- (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 1989****Definition**

2. In this Part—

“amending Act” means the Children (Criminal Proceedings) Amendment Act 1989.

**Application of amending Act to current proceedings etc.**

3. (1) An amendment made to this Act by Schedule 1 (3), (5), (6), (8), (12) (b) or (c) or (14) to the amending Act apply to proceedings pending at or commenced after the amendment commences.

(2) An amendment made to this Act by Schedule 1 (7), (10) (a) or (b), (11), (12) (a), (15) or (21) to the amending Act does not apply to proceedings commenced before the amendment commences.

(3) An amendment made by Schedule 1 (13) to the amending Act does not apply to a control order made before the amendment commences.

**Consents for publication of names etc.**

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

**Regulations concerning background reports**

5. The amendment made to this Act by Schedule 1 (8) (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 that amendment commences.



*Children (Criminal Proceedings) Amendment 1989*

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**SCHEDULE 2—AMENDMENT OF 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.

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[*Minister's second reading speech made in—  
Legislative Assembly on 5 April 1989  
Legislative Council on 10 May 1989*]





