

# Child Welfare Act 1939, New South Wales

1939 – 1987

URL: <https://www.legislation.nsw.gov.au/view/pdf/asmade/act-1939-17>

## Details

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The Child Welfare Act 1939 (17/1939) repealed the Child Welfare Act 1923. Its full title was 'An Act to consolidate and amend the law relating to children and young persons; to repeal the Child Welfare Act, 1923, and the Child Welfare (Amendment) Act, 1924; to amend the Interstate Destitute Persons Relief Act, 1919, and certain other Acts; to validate certain matters.' It contained many of the provisions of the previous child welfare legislation, but was much stronger and increased the powers of the Child Welfare Department. After the Aborigines Protection (Amendment) Act 1940, Aboriginal children were removed from their families under the Child Welfare Act 1939. This Act was amended many times, and Adoption was separated from it by the Adoption Act 1965. The Child Welfare Act 1939 was repealed in 1987 and replaced by the Children (Care and Protection) Act 1987.

The Child Welfare Act 1939 was partly a response to a major commission of inquiry into the Child Welfare Department in the 1930s, which found widespread abuses at government-run institutions for children.

The Child Welfare Act 1939 expanded the definition of a neglected child to include children who were destitute, whose parents were unfit to retain the child, or who without lawful excuse was not attending school regularly (truancy). The definition of a ward was expanded to include children in state control, committed to an institution, or resident in a hostel for expectant or nursing mothers, meaning unmarried mothers could lose their rights to make decisions. It enabled the Minister of the Child Welfare Department to order a child's adoption.

The broad scope of this Act was described:

*Where a court finds that a child is neglected, it may release the child on certain conditions; commit the child to the care of the minister to be dealt with as a State ward, or commit the child to the care of an institution. The Minister of Child Welfare is the guardian 'of every child ... who becomes a ward to the exclusion of the parent or other guardian'. The minister may direct the removal or transfer of any ward; remove the child from any charitable institution, depot, home or hostel and cause him or her to be apprenticed, boarded out, placed out or placed as an adopted boarder. An adoption order may be made if it promotes the welfare and interests of the child. Parents or guardian must consent to adoption but consent may be dispensed with where the Court deems it just and reasonable to do so.*

Under this Act, children could be apprehended by any police officer or officer of the Minister (that is, a Child Welfare Department staff member), for neglect or criminal activity. This Act made very little distinction between the treatment of children who were apprehended for being neglected (being without shelter or support, 'uncontrollable', 'at risk of lapsing into a life of vice', suffering venereal disease or 'at risk of falling into bad associations or exposed to moral danger') and those apprehended for summary and indictable offences.

Once apprehended children were charged with either neglect or crime and taken to the first possible hearing of a children's court – they could be detained in a shelter while they waited for a hearing. Parents were supposed to attend the hearings. Parents could also bring their own children before the court and plead inability to look after them or, more usually, that they could not control the child, at which point the Children's Court Magistrate could lay charges.

Children's Court Magistrates had the following options available to them: admonish and discharge the child; release the child on probation (supervision); commit the child to the care of a person who would undertake to care for it; commit it to the control of the Minister as a state ward; commit the child to an institution for a period not exceeding three years. If the child was guilty of a summary or indictable offence all of those things applied but there was an extra option, which was to deal with the child according to the law (as an adult).

There were many Amendments to this Act: Act No.48 1940 (*Youth Welfare Act*), Act No.63 1941 (recognition of interstate adoptions), Act No.9 1952 (*Prisons Act*), Act No.14 1955 (reduced sentences for children charged with murder and rape), Act No.9 1956, Act No.21 1960, Act No.15 1961, Act No.27 1961, Act No.74 1964 (*Maintenance Act*), Act No.23 1965, Act No.11 1966, Act No.27 1967, Act No.27 1969, Act No.37 1969, Act No.60 1970 (*Minors (Property and Contracts) Act*), Act No.90 1973 (*Youth and Community Services Act*), Act No.65 1975 (*Miscellaneous Acts (Administrative Changes) Amendment Act*), Act No.97 1976, Act No.20 1977, Act No.43 1977 (*Maintenance (Amendment) Act*), Act No.100 1977, Act No.163 1978, Act No.131 1979, Act No.28 1980, Act No.43 1981, Act No.168 1982 (*Miscellaneous Acts (Local Courts) Amendment Act*), Act No.195 1983.

## More info

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### Chronology

- Child Welfare Act 1923, New South Wales (1923 - 1939)
- Infant Convicts Adoption Act 1901, New South Wales (1901 - 1939)
  - **Child Welfare Act 1939, New South Wales (1939 – 1987)**
    - Adoption of Children Act 1965, New South Wales (1965 - 2003)
    - Children (Care and Protection) Act 1987, New South Wales (1987 - 2010)

### Related Entries

#### Related Events

- [Inquiry into Adoption Practices in NSW, New South Wales Legislative Council \(1998 - 2000\)](#)

#### Related Glossary Terms

- [Child Guidance Clinic \(1930s - current\)](#)
- [In Moral Danger \(c. 1939 - c. 1980\)](#)

#### Related Organisations

- [Children's Court of New South Wales \(October 1905 - current\)](#)
- [Myee \(1926 - 1977\)](#)
- [Parramatta Girls Training Home \(1912 - 1946\)](#)
- [Aborigines Welfare Board, State Government of New South Wales \(1940 - 1969\)](#)

The provisions of the *Child Welfare Act* began to apply to Aboriginal children, in stages from 1940 until 1969.
- [Aborigines Protection Board, State Government of New South Wales \(1883 - 1940\)](#)
- [Department of Child Welfare and Social Welfare, State Government of New South Wales \(1970 - 1973\)](#)
- [Department of Youth and Community Services, State Government of New South Wales \(1973 - 1975\)](#)
- [Child Welfare Department, State Government of New South Wales \(1923 - 1970\)](#)
- [Department of Youth and Community Services, State Government of New South Wales \(1976 - 1988\)](#)
- [Department of Youth, Ethnic and Community Affairs, State Government of New South Wales \(1975 - 1976\)](#)
- [Bidura \(1920 - 1977\)](#)

## Is amended by

- [Child Welfare \(Amendment\) Act 1966, New South Wales \(1966 - 1987\)](#)
- [Child Welfare \(Amendment\) Act 1961, New South Wales \(1961 - 1987\)](#)
- [Child Welfare \(Further Amendment\) Act 1961, New South Wales \(1961 - 1965\)](#)  
The Child Welfare (Further Amendment) Act 1961 amended the Child Welfare Act 1939.
- [Child Welfare \(Amendment\) Act 1967, New South Wales \(1967 - 1987\)](#)  
The Child Welfare (Amendment) Act 1967 amended the Children's Welfare Act 1939.
- [Child Welfare \(Amendment\) Act 1969, New South Wales \(1969 - 1987\)](#)  
The Child Welfare (Amendment) Act 1969 amended the Child Welfare Act 1939.

## Related Legislation

- [Child Welfare \(Commonwealth Agreement Ratification\) Act 1962, New South Wales \(1962 - current\)](#)
- [Child Welfare \(Commonwealth Agreement Ratification\) Act 1941, New South Wales \(1941 - current\)](#)
- [Miscellaneous Acts \(Community Welfare\) Repeal and Amendment Act 1987, New South Wales \(1987 - 2007\)](#)  
The *Child Welfare Act 1939* was repealed by the *Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987*
- [Aborigines Protection \(Amendment\) Act 1940, New South Wales \(1940 - 1969\)](#)  
The *Aborigines Protection (Amendment) Act of 1940* enabled Aboriginal children to be removed under the *Child Welfare Act 1939*.
- [Aborigines Protection \(Amendment\) Act 1943, New South Wales \(1943 - 1969\)](#)
- [Community Welfare Act 1982, New South Wales \(1981 - 1987\)](#)  
The *Community Welfare Act 1982* modernised and consolidated the *Child Welfare Act 1939*.

## Related Concepts

- [Adoption in New South Wales \(c. 1923 - current\)](#)

## Resources

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- McCulloch, J.E., *Child Welfare Department : report on the general organisation, control and administration of, with special reference to state welfare institutions*, 1934
- Minister of Public Instruction, *Report of the Minister of Public Instruction on the work of the Child Welfare Department*, 1921 - 1955
- Child Welfare Department, [Annual Report: Child Welfare Department of New South Wales](#), 1923 - 1970
- [N.S.W. Report: Reforms sought in child protection](#), The Canberra Times, 21 December 1974
- Parliamentary Counsel's Office, [NSW legislation](#), No date
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- State Records Authority of New South Wales, [Dept of Community Services](#), No date
- Quinn, Peter, *That other State Aid question: assistance to charitable homes for children*, Journal of the Australian Catholic Historical Society, 2005
- [Joanna Penglase interviewed by Susan Marsden in the Forgotten Australians and Former Child Migrants oral history project](#), 2 June 2010
- [Patrick Sephton interviewed by Ann-Mari Jordens in the Bringing them home oral history project \(2001\)](#), 2001
- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), [To Remove and Protect](#), 2014

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