

8.

New South Wales

The laws

From 1911 until 1989 a number of NSW laws as well as Commonwealth ordinances applied in the ACT.

Following self-government in 1989 the ACT passed its own laws.

| Decade | Laws applying specifically to Aboriginal children | General child welfare laws/adoption laws |
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| 1810s | <p>Governor Macquarie: Proclamation dated 4 May 1816</p> <p>Aborigines declared subject to the protection of British law, but any infractions may render them outlawed and leave to loss of privileges.</p> | |
| 1840s | | <p>Act to Provide for the Care and Education of Infants Who May Be Convicted of Felony or Misdemeanour 1849</p> <p>Where a child under the age of 19 is convicted, court may assign care and custody of the child to such persons as make application where the court is satisfied it is for the benefit of the child.</p> <p><i>Repealed by Infants Conviction Act 1901</i></p> |
| 1880s | | <p>State Children Relief Act 1881</p> <p>Established State Children's Relief Board. 'Boarding out' officers may remove children from charitable institutions and arrange for them to be boarded out in licensed homes.</p> <p>Regulations may be made prescribing terms and conditions upon which State children may be 'adopted' by fit persons.</p> <p><i>Repealed by State Children Relief Act 1901</i></p> |
| 1890s | | <p>Protection of Children Act 1892</p> <p>Unlawful for certain persons without a written order of a Justice of the Peace to receive into care a child under the age of three 'to adopt, rear, nurse or otherwise raise for payment'.</p> <p><i>Repealed by Children's Protection Act 1902</i></p> |

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| | | <p>Custody of Children and Children's Settlements Act 1894</p> <p>Where a parent applies for an order for the return of a child the court may refuse the order where it is of the opinion that the parent has abandoned or deserted or neglected the child or otherwise so conducted himself or herself that the court should refuse to enforce the parent's right to custody; or where the tender age or state of health of the child render it expedient that the child should remain with the child's mother or some other person.</p> <p><i>Repealed by Infants Custody and Settlements Act 1899</i></p> |
| | | <p>Infants Custody and Settlements Act 1899</p> <p>Similar to 1894 Act.</p> <p><i>Repealed by Children's Protection Act 1902</i></p> |
| 1900s | <p>Aborigines Protection Act 1909</p> <p>This Act gave the Board for the Protection of Aborigines statutory powers in relation to all reserves.</p> <p><i>Definitions</i></p> <p><i>aborigine</i> – any 'full blooded aboriginal native of Australia, and any person apparently having an admixture of aboriginal blood who applies for or is in receipt of rations or aid from the Board or is living on a reserve'</p> <p><i>neglected child</i> – a child found by the court to be neglected under the <i>Neglected Children and Juvenile Offenders Act 1909</i></p> <p><i>Key Provisions</i></p> <p>Duty of the Board to provide for the custody, maintenance and education of the children of 'aborigines.' Board may apprentice 'the child of any aborigine or neglected child of any person apparently having an admixture of aboriginal blood in his veins' subject to the <i>Apprentices Act 1901</i>.</p> | <p>Infant Convicts Adoption Act 1901</p> <p>Where an infant under 19 years is convicted of a felony or misdemeanour, the court may assign the care or custody of the child to an applicant willing to take charge of him and provide for his maintenance if judged to be for infant's benefit.</p> <p><i>Repealed by Child Welfare Act 1939</i></p> <hr/> <p>State Children Relief Act 1901</p> <p>Established State Children's Relief Board with authority to direct the removal of State children; grant licences for the reception of State children as boarders; apprentice any child; approve persons applying to 'adopt' State children; and arrange terms of 'adoption'. Boarding out officer may remove State child from asylum, reformatory school, and arrange for a child to be boarded out.</p> <p><i>Repealed by Child Welfare Act 1923</i></p> |

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| | <p>(The <i>Apprentices Act 1901</i> provided for a minimum age of 14 years for apprentices and regulated the terms and conditions of apprenticeships.)</p> <p>The Board vested with power over all reserves including power to remove people from them. Entry onto reserves by non-Aborigines forbidden.</p> <p>Regulations may be made for care, custody and education of Aborigines and prescribing the conditions on which certain children may be apprenticed under the Act.</p> <p><i>Regulations</i> <i>Aborigines Protection Act Regulation 1909</i> – ‘every Aboriginal male under the age of 14 years, and every unmarried Aboriginal female under the age of 18 years shall, when so required by the manager, reside or take his or her meals and sleep in any building set apart for such purposes.</p> <p><i>Aborigines Protection Act 1915</i> – ‘every able bodied aborigine, half-caste and other person resident on one of the Board’s stations shall do a reasonable amount of work as directed by the Manager.’ Anyone persistently refusing to do work when required shall have all supplies for himself and his family withdrawn until he resumes work and shall be liable to be removed from the station.</p> <p><i>Repealed by Aborigines Act 1969</i></p> | <p>Children’s Protection Act 1902</p> <p>An offence for any person to receive a child under three to adopt, rear, nurse or otherwise maintain for payment a child, other than a guardian, manager or officer of an institution or private charity or a person exempted by Minister. An offence also to neglect or ill-treat a child. A child so found may be boarded out, sent to an industrial school or committed to the care of a relation or other person.</p> <p><i>Repealed by Child Welfare Act 1923</i></p> <hr/> <p>Neglected Children and Juvenile Offenders Act 1905</p> <p><i>Definitions</i> <i>neglected child</i> – includes a child having no visible means of support or no fixed abode; who sleeps in the open air; who without reasonable excuse is not provided with sufficient and proper food, nursing, clothing, medical aid or lodging; whose parents are habitual drunkards; or who is living under such conditions as to indicate that the child is lapsing into a career of vice and crime.</p> <p><i>Key provisions</i> A ‘neglected’ or ‘uncontrollable’ child may be apprehended and brought before a court which can release the child on probation, commit the child to an institution until the age of 18 years or to the care of a willing person. A child in an institution may be apprenticed in accordance with the <i>Apprentices Act 1901</i>.</p> <p><i>Repealed by Child Welfare Act 1923</i></p> |

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| 1910s – 1920s | <p>Aborigines Protection Amending Act 1915</p> <p>Removed the requirement that an Aboriginal child had to be found to be neglected before the Board could remove him/her.</p> <p><i>Key provisions</i></p> <p>‘The Board may assume full control and custody of the child of any aborigine, if after due inquiry it is satisfied that such a course is in the interest of the moral or physical welfare of such child’ and remove such child to such control and care as it thinks best. Parents of a child removed in this way may appeal to a court.</p> <p>Apprenticeship of children by the Board no longer subject to the Apprentices Act 1901. The Board may apprentice children ‘on such terms and conditions as it may think under the circumstances of the case to be desirable’. Every child so apprenticed who refuses to go to the person to whom the Board has apprenticed him/her may be removed, for the purpose of being trained, to some home or institution as the Board may arrange.</p> <p><i>Repealed by Aborigines Act 1969</i></p> | <p>Child Welfare Act 1923</p> <p>Court given similar power as in 1905 Act to commit a ‘neglected’ or ‘uncontrollable’ child. All children committed to or inmates of an institution in the custody are under the control of the superintendent of the institution until they attain the age of 18 or are discharged, removed, apprenticed or placed out. A child may be adopted if the child’s parents or guardian consent. Consent may be dispensed with if the court is of the opinion that the parent or guardian has deserted or abandoned the child.</p> <p><i>Amended by</i></p> <p><i>Child Welfare (Amendment) Act 1924</i> – court may dispense with consent in any special circumstances where it deems it expedient to do so.</p> <p><i>Repealed by Child Welfare Act 1939</i></p> |
| | <p>Aborigines Protection (Amendment) Act 1918</p> <p><i>Definitions</i></p> <p><i>Aborigine</i> – ‘any full-blooded or half-caste aboriginal who is a native of New South Wales’.</p> <p><i>Key provisions</i></p> <p>Provisions in 1909 Act giving Board power over a person ‘apparently having an admixture of aboriginal blood in his veins’ removed.</p> <p><i>Repealed by Aborigines Act 1969</i></p> | |

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| 1930s | <p>Aborigines Protection (Amendment) Act 1936</p> <p><i>Definitions</i></p> <p>Definition of ‘aborigine’ in 1918 Act amended by omitting reference to New South Wales and substituting ‘Australia and who is temporarily or permanently resident in New South Wales’.</p> <p><i>Key provisions</i></p> <p>Court may order the removal of an ‘aborigine’ who is ‘living in insanitary or undesirable conditions’ to a reserve or a place controlled by the Board or to the State from whence he/she came.</p> <p><i>Repealed by Aborigines Act 1969</i></p> | <p>Child Welfare Act 1939 Replaced the Child Welfare Act 1923.</p> <p><i>Definitions</i></p> <p><i>neglected child</i> – definition expanded to include a child who is destitute, whose parents are unfit to retain the child or who without lawful excuse does not attend school regularly</p> <p><i>ward</i> – includes a child or young person who has been admitted to State control, committed to an institution or admitted to a hostel for expectant and nursing mothers</p> <p><i>Key provisions</i></p> <p>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’. Minister may direct the removal or transfer of any ward; remove any child from any charitable institution, depot, home or hostel and cause him/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 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.</p> <p><i>Amended by</i></p> <p><i>Child Welfare Amendment Act 1961</i> – where payment of maintenance for child who is an inmate of a charitable depot, home or hostel has not been paid for 1–6 months, the child may be admitted to State control and the person in charge of the charitable depot, home or hostel deemed to be the child’s foster parent.</p> |

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| | | <p><i>Child Welfare (Amendment) Act 1966</i> – where it appears to an officer or person in charge of a depot, home or hostel that the welfare of the child may be promoted, the child may be committed by a court to the care of Minister to be dealt with as a ward admitted to State control; apprenticed, boarded out, placed out or placed as an adopted boarder.</p> <p><i>Repealed by Children (Care and Protection) Act 1987</i></p> |
| 1940s | <p>Aborigines Protection (Amendment) Act 1940</p> <p>Aborigines Protection Board replaced by Aborigines Welfare Board. An Aboriginal child found to be neglected under the Child Welfare Act 1939 to be committed to the Board as a ‘ward of the Board’.</p> <p><i>Definitions</i></p> <p><i>child</i> – ‘an aborigine under 18 years of age’</p> <p><i>ward</i> - ‘a child who has been admitted to the control of the Board or a home constituted under the Act’</p> <p><i>Key provisions</i></p> <p>Duties of the Board include ‘assisting aborigines in obtaining employment’ and ‘maintaining or assisting to maintain them whilst so employed, or otherwise for the purpose of assisting aborigines to become assimilated into the general life of the community’. The Board no longer has duty of education of Aboriginal children but still has duty of custody and maintenance. It may establish homes for the reception, maintenance, education and training of wards.</p> <p>Where in the opinion of the Board a ward is not ready for employment or apprenticeship ‘the ward may be placed in a home for the purpose of being maintained, educated and trained’.</p> <p>Wages of children to be paid to the Board and kept in a trust account for use by the Board for the ward’s benefit until the ward turns 21.</p> | |

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| | <p>An offence to try to communicate with a ward in a home or enter any such home without the consent of the Board. Where a children's court finds that a child is neglected or uncontrollable under the Child Welfare Act, the court may deal with the child in accordance with that Act, except that where the court decides that the child should be admitted to State control the child shall be committed to the care of the Board as a ward; and where the court decides to commit the child to an institution the child shall be committed to an institution established under this Act.</p> <p><i>Repealed by Aborigines Act 1969</i></p> | |
| | <p>Aborigines Protection (Amendment) Act 1943</p> <p>The Board may issue (and cancel) exemption certificates whereby an Aboriginal person 'shall be deemed not to be an aborigine or a person apparently having an admixture of aboriginal blood'. The Board may board-out children admitted to its control. Once an Aboriginal child has attained the minimum school leaving age the child is to be apprenticed or placed in employment. The Board is the authority in relation to children admitted to its control with power over removal and transfer of wards, apprenticing wards and approving custody of wards.</p> <p><i>Repealed by Aborigines Act 1969</i></p> | |
| 1960s | <p>Aborigines Protection (Amendment) Act 1963</p> <p>Repeal of provisions allowing a magistrate to send 'mixed blood' Aboriginal people to a place controlled by the Board; and those which made it an offence to take an adult Aboriginal person away from NSW and for non-Aboriginal and Aboriginal people to live together.</p> <p><i>Repealed by Aborigines Act 1969</i></p> | |

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| | <p>Aborigines Act 1969</p> <p>Abolition of Aborigines Welfare Board. Aboriginal children under the care of the Aborigines Welfare Board to become wards of the State. Aboriginal children's institutions deemed to be depots under the <i>Child Welfare Act 1939</i> and subsequent child welfare legislation.</p> | |

After *Aboriginal Protection (Amendment) Act 1940*, Aboriginal children were removed under the *Child Welfare Act 1939* and subsequent child welfare legislation.

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| 1960s | <p>Adoption of Children Act 1965</p> <p>The welfare and interests of child are the paramount consideration. In making an adoption order the Court may dispense with consent if a person cannot be found or identified; the person is not capable of properly considering the question; the person is unfit to discharge the obligations of parent or guardian having abandoned, deserted, neglected or ill treated a child; the person failed to discharge obligations of parent or guardian; or there are any other special circumstances by reason of which consent may be dispensed with.</p> <p><i>Amended by</i></p> <p><i>Adoption of Children Amendment 1966</i> – court power to dispense with consent due to 'other special circumstances' removed. Court may dispense with consent where the interests and welfare of child are promoted by the adoption order.</p> <p><i>Adoption of Children (Amendment) Act 1980</i> – established the Adoption Tribunal.</p> |
| 1980s | <p>Children (Care and Protection) Act 1987</p> <p><i>Definitions</i></p> <p><i>child in need of care</i> – where provision is not being made for the child's care; the child is being or is likely to be abused; or there has been an irretrievable breakdown in the relationship between the child and parents</p> <p><i>Key provisions</i></p> <p>Introduced Aboriginal Child Placement Principle. Concept of 'neglect' replaced by 'behaviour that harms the child'.</p> |