



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes (Administration of Sentences) Act 1999* (the *Principal Act*):

- (a) to enable the use of audio links and audio visual links in proceedings before the Parole Board and the Serious Offenders Review Council, and
- (b) to enable the Parole Board in appropriate circumstances to cause a notice that an offender's periodic detention order, home detention order or parole order has been revoked to be served on the offender after the offender has been arrested and taken into custody, and
- (c) to provide that the annual report of the Inspector-General of Corrective Services is to be a separate report and not included in the annual report of the Department of Corrective Services, and

- (d) to empower a correctional officer to provide assistance to police officers or officers of the Department of Juvenile Justice in the restraint, conveyance or detention of any person in their lawful custody, and
- (e) to make various other amendments to facilitate the administration of the Act or for the purposes of statute law revision.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts definitions of *audio link* and *audio visual link* into the Principal Act.

Schedule 1 [2] and **[5]** remove certain words from provisions of the Principal Act for the purposes of statute law revision to ensure consistency with other provisions of the Act.

Schedule 1 [3] reinstates a requirement that existed under the repealed *Correctional Centres Act 1952* that the governor of a correctional centre must refer to a Visiting Justice for determination any charge that an inmate has committed a correctional centre offence that is a major offence or a minor offence of a serious nature. Offences are classified as major or minor offences under the regulations. Currently, the governor of a correctional centre has a discretion as to whether to refer such a charge.

Schedule 1 [4] enables regulations to be made with respect to analyses of samples taken for the purpose of testing for the use of drugs or alcohol by an offender and the admission of certificates relating to those analyses as prima facie evidence in proceedings for a correctional centre offence.

Schedule 1 [6] provides that a community service order is taken to be in force for the purpose of enabling the determination of an application for its revocation.

Schedule 1 [7] enables the Parole Board, when it revokes an offender's periodic detention order, home detention order or parole order and issues a warrant for the offender's apprehension, to cause notice of the revocation to be served on the offender after the warrant has been executed.

Schedule 1 [8] enables the Serious Offenders Review Council to delegate certain functions relating to the segregated and protective custody of inmates to the Chairperson of the Council or a judicial member of the Council.

Schedule 1 [9] provides that the annual report of the Inspector-General of Corrective Services is to be a separate report. At present, the Inspector-General's annual report is required to be included in the annual report of the Department of Corrective Services.

Schedule 1 [10] makes it clear that the Commissioner of Corrective Services may delegate certain functions relating to the making of directions in respect of segregated custody and protective custody of inmates.

Schedule 1 [11] enables a correctional officer to provide assistance to a police officer or an officer of the Department of Juvenile Justice who requests the assistance to restrain, convey or detain any person in the lawful custody of the requesting officer. A correctional officer providing such assistance is given all the functions and immunities of the requesting officer in relation to the restraint, conveyance or detention of the person.

Schedule 1 [12] provides for a person who is required or entitled to appear in proceedings before the Parole Board and who is in custody to appear before the Board by means of audio visual link unless the Board otherwise directs. The Parole Board may direct that any other person appear before the Parole Board by means of audio link or audio visual link. The provisions will not apply in circumstances where the necessary facilities are not readily available.

Schedule 1 [13] provides for a person who is required or entitled to appear in proceedings before the Serious Offenders Review Council and who is in custody to appear before the Council by means of audio visual link unless the Council otherwise directs. The Council may direct that any other person appear before the Council by means of audio link or audio visual link. The provisions will not apply in circumstances where the necessary facilities are not readily available.

First print



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2001

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New South Wales

Crimes (Administration of Sentences) Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Crimes (Administration of Sentences) Act 1999* in relation to community service orders, referral of offences to Visiting Justices, reports of the Inspector-General of Corrective Services, delegation of certain functions under that Act and use of audio links and audio visual links; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Administration of Sentences) Amendment Act 2001</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93	8
The <i>Crimes (Administration of Sentences) Act 1999</i> is amended as set out in Schedule 1.	9 10

Schedule 1 Amendments

	1
(Section 3)	2
[1] Section 3 Interpretation	3
Insert in alphabetical order in section 3 (1):	4
<i>audio link</i> means facilities (including telephone) that enable audio communication between persons at different places.	5
<i>audio visual link</i> means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.	6
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[2] Section 23 Transfers from one correctional centre to another	10
Omit “a contagious or” from section 23 (b). Insert instead “an”.	11
[3] Section 54 Reference of offences to Visiting Justice	12
Omit section 54 (1). Insert instead:	13
(1) The governor must refer an offence with which an inmate is charged to a Visiting Justice for hearing and determination if:	14
(a) the offence is a major offence, or	15
(b) the offence is a minor offence but the governor considers that because of the serious nature of the offence it should be referred to a Visiting Justice.	16
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[4] Section 79 Regulations	20
Insert after section 79 (v):	21
(v1) analyses in connection with any such tests and the admission of certificates relating to the results of any such analyses as prima facie evidence in any proceedings for a correctional centre offence (within the meaning of section 51) being dealt with under this Act by a governor or Visiting Justice,	22
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[5] Section 91 Leave of absence at direction of Commissioner	1
Omit “a contagious or” from section 91 (2). Insert instead “an”.	2
[6] Section 115 Revocation of community service orders	3
Insert after section 115 (2A):	4
(2B) For the purpose only of determining an application under this section, a community service order is taken to be in force even if the relevant maximum period has expired.	5 6 7
[7] Section 173 Notice of revocation	8
Omit section 173 (1). Insert instead:	9
(1) The Parole Board must cause a notice (a <i>revocation notice</i>) to be served on an offender if the Parole Board revokes the offender’s periodic detention order, home detention order or parole order.	10 11 12 13
(1A) A revocation notice must be served:	14
(a) as soon as practicable after the revocation of the order concerned, unless paragraph (b) applies, or	15 16
(b) if the Parole Board issues a warrant under section 181 in relation to the offender, as soon as practicable after the warrant has been executed.	17 18 19
[8] Section 197 Functions of Review Council	20
Insert after section 197 (2):	21
(3) The Review Council may delegate any function which it has under Division 2 (Segregated and protective custody) of Part 2 to the Chairperson or to a judicial member.	22 23 24
[9] Section 220 Reports of Inspector-General	25
Omit section 220 (2). Insert instead:	26
(2) The annual report is to be furnished to the Minister as soon as practicable after 30 June in each year.	27 28
(3) The Minister must, as soon as practicable after receiving the annual report, lay a copy of the report or cause it to be laid before both Houses of Parliament.	29 30 31

<p>(4) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (3), the Minister must present copies of the report to the Clerk of the House of Parliament.</p> <p>(5) A report presented to the Clerk of a House of Parliament:</p> <p style="padding-left: 2em;">(a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and</p> <p style="padding-left: 2em;">(b) may be printed by authority of the Clerk of the House, and</p> <p style="padding-left: 2em;">(c) for all purposes is taken to be a document published by order or under the authority of the House, and</p> <p style="padding-left: 2em;">(d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:</p> <p style="padding-left: 4em;">(i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or</p> <p style="padding-left: 4em;">(ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.</p> <p>[10] Section 232 Commissioner</p> <p>Insert after section 232 (3):</p> <p style="padding-left: 2em;">(4) Sections 10 (2) and 11 (3) do not limit the power of the Commissioner to delegate functions under sections 10 and 11.</p> <p>[11] Section 252A</p> <p>Insert after section 252:</p> <p>252A Correctional officers may provide assistance</p> <p style="padding-left: 2em;">(1) A correctional officer may, if requested to do so by a police officer or an officer of the Department of Juvenile Justice, provide assistance in connection with the restraint, conveyance or detention of any person in the lawful custody of the officer requesting the assistance.</p> <p style="padding-left: 2em;">(2) A correctional officer has, while providing such assistance, all the functions and immunities of the officer who requested the assistance in relation to the restraint, conveyance or detention of the person concerned.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p>
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[12] Schedule 1 Parole Board	1
Insert after clause 11:	2
11A Use of audio links and audio visual links in proceedings	3
(1) A person who is required or entitled to appear before the Parole Board in any proceedings and who is in custody in New South Wales:	4
(a) must, unless the Parole Board otherwise directs, appear before the Parole Board by audio visual link if the place at which the person is in custody is not the place at which the Parole Board is conducting the proceedings, and	5 6 7 8 9 10 11
(b) may give evidence or make any submission to the Parole Board by that audio visual link.	12 13
(2) Subclause (1) does not apply unless the person concerned is in custody at a place where the necessary audio visual links are available or can reasonably be made available.	14 15 16
(3) The Parole Board may make a direction under subclause (1) only if it is satisfied that it is in the interests of justice for the person required or entitled to appear in the relevant proceedings to appear physically before the Parole Board.	17 18 19 20
(4) The Parole Board may direct that a person to whom subclause (1) does not apply (whether or not the person is a party to the proceedings) give evidence or make a submission to the Parole Board by audio link or audio visual link from any place other than the place at which the Parole Board is conducting the proceedings.	21 22 23 24 25 26
(5) The Parole Board must not make a direction under subclause (4) if:	27 28
(a) the necessary facilities are unavailable or cannot reasonably be made available, or	29 30
(b) the Parole Board is satisfied that the evidence or submission can more conveniently be given or made at the place at which the Parole Board is conducting the relevant proceedings, or	31 32 33 34

(c)	the Parole Board is satisfied by a party opposing the making of the direction that the direction would be unfair to the party, or	1 2 3
(d)	the Parole Board is satisfied that the person in respect of whom the direction is proposed to be made will not give evidence or make the submission.	4 5 6
(6)	If a party to the proceedings opposes the making of a direction under subclause (4), the Parole Board must not make the direction unless satisfied that it is in the interests of justice to do so.	7 8 9 10
(7)	The Parole Board may make a direction under subclause (1) or (4) on its own motion or on the application of any party to the proceedings.	11 12 13
(8)	If audio visual links are used for proceedings before the Parole Board, facilities are to be made available for private communication between the person the subject of the proceedings and the person's representative in the proceedings if the person's representative is at the place where the Parole Board is conducting the proceedings.	14 15 16 17 18 19
(9)	The regulations may make provision for or with respect to the use of audio links and audio visual links in proceedings before the Parole Board.	20 21 22
[13]	Schedule 2 Serious Offenders Review Council	23
	Insert after clause 11:	24
11A	Use of audio links and audio visual links in proceedings	25
(1)	A person who is required or entitled to appear before the Review Council in any proceedings and who is in custody in New South Wales:	26 27 28
(a)	must, unless the Review Council otherwise directs, appear before the Review Council by audio visual link if the place at which the person is in custody is not the place at which the Review Council is conducting the proceedings, and	29 30 31 32 33
(b)	may give evidence or make any submission to the Review Council by that audio visual link.	34 35

- (2) Subclause (1) does not apply unless the person concerned is in custody at a place where the necessary audio visual links are available or can reasonably be made available. 1
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- (3) The Review Council may make a direction under subclause (1) only if it is satisfied that it is in the interests of justice for the person required or entitled to appear in the relevant proceedings to appear physically before the Review Council. 4
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- (4) The Review Council may direct that a person to whom subclause (1) does not apply (whether or not the person is a party to the proceedings) give evidence or make a submission to the Review Council by audio link or audio visual link from any place other than the place at which the Review Council is conducting the proceedings. 8
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- (5) The Review Council must not make a direction under subclause (4) if: 14
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- (a) the necessary facilities are unavailable or cannot reasonably be made available, or 16
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- (b) the Review Council is satisfied that the evidence or submission can more conveniently be given or made at the place at which the Review Council is conducting the relevant proceedings, or 18
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- (c) the Review Council is satisfied by a party opposing the making of the direction that the direction would be unfair to the party, or 22
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- (d) the Review Council is satisfied that the person in respect of whom the direction is proposed to be made will not give evidence or make the submission. 25
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- (6) If a party to the proceedings opposes the making of a direction under subclause (4), the Review Council must not make the direction unless satisfied that it is in the interests of justice to do so. 28
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- (7) The Review Council may make a direction under subclause (1) or (4) on its own motion or on the application of any party to the proceedings. 32
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- (8) If audio visual links are used for proceedings before the Review Council, facilities are to be made available for private communication between the person the subject of the proceedings and the person’s representative in the proceedings if the person’s representative is at the place where the Review Council is conducting the proceedings. 1
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 - (9) The regulations may make provision for or with respect to the use of audio links and audio visual links in proceedings before the Review Council. 7
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