

Passed by both Houses



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2001

Act No , 2001

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Administration of Sentences) Amendment Act 2001*.

2 Commencement

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

3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

audio link means facilities (including telephone) that enable audio communication between persons at different places.

audio visual link means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

[2] Section 23 Transfers from one correctional centre to another

Omit “a contagious or” from section 23 (b). Insert instead “an”.

[3] Section 54 Reference of offences to Visiting Justice

Omit section 54 (1). Insert instead:

- (1) The governor must refer an offence with which an inmate is charged to a Visiting Justice for hearing and determination if:
 - (a) the offence is a major offence, or
 - (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.

[4] Section 79 Regulations

Insert after section 79 (v):

- (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,

[5] Section 91 Leave of absence at direction of Commissioner

Omit “a contagious or” from section 91 (2). Insert instead “an”.

[6] Section 115 Revocation of community service orders

Insert after section 115 (2A):

- (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.

[7] Section 173 Notice of revocation

Omit section 173 (1). Insert instead:

- (1) The Parole Board must cause a notice (a *revocation notice*) to be served on an offender if the Parole Board revokes the offender’s periodic detention order, home detention order or parole order.
- (1A) A revocation notice must be served:
- (a) as soon as practicable after the revocation of the order concerned, unless paragraph (b) applies, or
 - (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.

[8] Section 197 Functions of Review Council

Insert after section 197 (2):

- (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.

[9] Section 220 Reports of Inspector-General

Omit section 220 (2). Insert instead:

- (2) The annual report is to be furnished to the Minister as soon as practicable after 30 June in each year.
- (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.

- (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.
- (5) A report presented to the Clerk of a House of Parliament:
 - (a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) for all purposes is taken to be a document published by order or under the authority of the House, and
 - (d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.

[10] Section 232 Commissioner

Insert after section 232 (3):

- (4) Sections 10 (2) and 11 (3) do not limit the power of the Commissioner to delegate functions under sections 10 and 11.

[11] Section 252A

Insert after section 252:

252A Correctional officers may provide assistance

- (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.
- (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.

[12] Schedule 1 Parole Board

Insert after clause 11:

11A Use of audio links and audio visual links in proceedings

- (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:
 - (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
 - (b) may give evidence or make any submission to the Parole Board by that audio visual link.
- (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.
- (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.
- (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.
- (5) The Parole Board must not make a direction under subclause (4) if:
 - (a) the necessary facilities are unavailable or cannot reasonably be made available, or
 - (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

- (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
 - (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.
- (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) The Parole Board may make a direction under subclause (1):
 - (a) on its own motion, or
 - (b) on the application of a party to the proceedings, or
 - (c) if the proceedings relate to the consideration of the release of a serious offender on parole, on the application of a victim of the serious offender.
- (8) If the Parole Board refuses to make a direction on an application by a victim under subclause (7), the Parole Board must give reasons in writing to the victim for the refusal.
- (9) The Parole Board may make a direction under subclause (4) on its own motion or on the application of any party to the proceedings.
- (10) 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.
- (11) 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.
- (12) For the avoidance of doubt, this clause operates despite any other provision of this Act that requires or entitles a person to be present at any proceedings of the Parole Board and, in particular, applies despite section 147.

[13] Schedule 2 Serious Offenders Review Council

Insert after clause 11:

11A Use of audio links and audio visual links in proceedings

- (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:
 - (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
 - (b) may give evidence or make any submission to the Review Council by that audio visual link.
- (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.
- (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) 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.
- (5) The Review Council must not make a direction under subclause (4) if:
 - (a) the necessary facilities are unavailable or cannot reasonably be made available, or
 - (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

- (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
 - (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.
- (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.
- (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.
- (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.
- (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.
- (10) For the avoidance of doubt, this clause operates despite any other provision of this Act that requires or entitles a person to be present at any proceedings of the Review Council and, in particular, applies despite section 21.