



New South Wales

Children (Criminal Proceedings) Amendment (Adult Detainees) 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 ensure that, where a juvenile offender is sentenced to imprisonment for an indictable offence by an adult court, the offender must serve the sentence in a prison rather than with other juvenile offenders in a detention centre:

- (a) for that part of the sentence that is served after attaining the age of 21 years, or
- (b) for that part of the sentence that is served after attaining the age of 18 years if the offender has been convicted of a serious indictable offence, unless the sentencing court considers there are special circumstances justifying detention with other juvenile offenders in a detention centre.

Currently, the *Children (Criminal Proceedings) Act 1987* provides that a person who committed an indictable offence (generally, offences of a more serious nature) when a child and who is under 21 years of age when charged with the offence may

be dealt with according to law (that is, as if the person were an adult). If the person committed a *serious children's indictable offence* (generally, an offence carrying a maximum penalty of imprisonment for 25 years or more), the person must be dealt with according to law. However, if the sentencing court imposes a term of imprisonment on a person who is under 21 years of age at the time of sentence, the court may order that the term be served in a detention centre, rather than in a prison. There are no restrictions on the court's discretion and an order can be made that has effect after the person attains the age of 21 years.

The Bill provides as follows:

- (a) A person who is guilty of a serious children's indictable offence and who is sentenced to a term of imprisonment must be transferred to a prison on attaining the age of 18 years to serve the term of imprisonment in a prison, unless the sentencing court determines that there are special circumstances justifying the detention of the person in a detention centre.
- (b) A person who is due to be transferred to a prison on attaining the age of 18 years because there were no special circumstances at the time of sentencing may later seek leave to apply to the sentencing court for an order preventing transfer to a prison on the grounds that there are special circumstances justifying the detention of the person in a detention centre.
- (c) If the term of imprisonment expires within 6 months after the person attains the age of 18 years, the person is not required to be transferred to a prison and may serve that remaining short period in a detention centre.
- (d) A person who is sentenced to serve a term of imprisonment in a detention centre must be transferred to a prison on attaining the age of 21 years to serve the remainder of the sentence.
- (e) If the term of imprisonment expires within 6 months after the person attains the age of 21 years, the person is not required to be transferred to a prison and may serve that remaining short period in a detention centre.

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 to be appointed by proclamation.

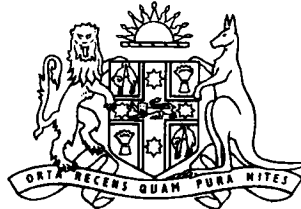
Clause 3 is a formal provision giving effect to the amendments to the *Children (Criminal Proceedings) Act 1987* set out in Schedule 1.

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Explanatory note

Schedule 1 contains amendments to the *Children's (Criminal Proceedings) Act 1987* described in the Overview.

First print



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New South Wales

Children (Criminal Proceedings) Amendment (Adult Detainees) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Children (Criminal Proceedings) Act 1987* with respect to the detention of adult offenders in detention centres; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001</i> .	3 4
2 Commencement	5
This Act commences on a day to be appointed by proclamation.	6
3 Amendment of Children (Criminal Proceedings) Act 1987 No 55	7
The <i>Children (Criminal Proceedings) Act 1987</i> is amended as set out in Schedule 1.	8 9

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 19	3
	Omit the section. Insert instead:	4
	19 Court may direct imprisonment to be served in a detention centre	5 6
	(1) If a court sentences a person under 21 years of age to whom this Division applies to imprisonment in respect of an indictable offence, the court may, subject to this section, make an order directing that the whole or any part of the term of the sentence of imprisonment be served in a detention centre.	7 8 9 10 11
	(2) A person is not eligible to serve a sentence of imprisonment in a detention centre after the person has attained the age of 21 years, unless the term of the sentence of imprisonment will end within 6 months after the person has attained that age.	12 13 14 15
	(3) A person who is sentenced to imprisonment in respect of a serious children's indictable offence is not eligible to serve a sentence of imprisonment in a detention centre after the person has attained the age of 18 years, unless:	16 17 18 19
	(a) the sentencing court is satisfied that there are special circumstances justifying detention of the person in a detention centre after that age, or	20 21 22
	(b) the term of the sentence of imprisonment will end within 6 months after the person has attained that age.	23 24
	This subsection is subject to subsection (2).	25
	(4) In determining whether there are special circumstances for the purposes of subsection (3), the court may have regard to the following matters:	26 27 28
	(a) the degree of vulnerability of the person,	29
	(b) the availability of appropriate services or programs at the place the person will serve the sentence of imprisonment,	30 31 32
	(c) any other matter that the court thinks fit.	33

(5) A person who is subject to an order under this section that ceases or ceased to apply on the person attaining the age of 18 years may apply to the sentencing court for a further order under this section. Any such application requires the leave of the court.	1 2 3 4 5
[2] Schedule 2 Savings and transitional provisions	6
Insert at the end of clause 1 (1):	7
<i>Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001</i>	8 9
[3] Schedule 2, Part 7	10
Insert after Part 6:	11
Part 7 Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001	12 13
10 Application of amendments	14
Section 19, as substituted by the <i>Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001</i> :	15 16
(a) applies to persons who are sentenced after the commencement of that Act, and	17 18
(b) does not affect any order made before the commencement of that Act.	19 20