



New South Wales

# **Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001 No 123**

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New South Wales

# **Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001 No 123**

Act No 123, 2001

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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.  
[Assented to 19 December 2001]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*.

**2 Commencement**

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

**3 Amendment of Children (Criminal Proceedings) Act 1987 No 55**

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 1.

**4 Monitoring by Ombudsman**

- (1) For the period of 3 years after the commencement of this section, the Ombudsman is to keep under scrutiny the operation and effect of section 19 of the *Children (Criminal Proceedings) Act 1987* as substituted by this Act.
- (2) For that purpose, the Ombudsman may require the Director-General of the Attorney General's Department, the Director-General of the Department of Juvenile Justice or the Director-General of the Department of Corrective Services to provide information concerning the participation of the Department concerned in the operation of that section.
- (3) As soon as practicable after the expiration of that period of 3 years, the Ombudsman must prepare a report as to the operation and effect of that section and furnish a copy of the report to the Attorney General, the Minister for Juvenile Justice and the Minister for Corrective Services.
- (4) The Attorney General is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Attorney General receives the report.
- (5) If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General may present copies of the report to the Clerk of the House concerned.
- (6) The report:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and

- (b) may be printed by authority of the Clerk of the House, and
- (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
- (d) is to be recorded:
  - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
  - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

## Schedule 1 Amendments

(Section 3)

### [1] Section 19

Omit the section. Insert instead:

#### **19 Court may direct imprisonment to be served in a detention centre**

- (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.
- (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:
  - (a) in the case of a sentence for which a non-parole period has been set—the non-parole period will end within 6 months after the person has attained that age, or
  - (b) in the case of a sentence for which a non-parole period has not been set—the term of the sentence of imprisonment will end within 6 months after the person has attained that age.
- (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:
  - (a) the sentencing court is satisfied that there are special circumstances justifying detention of the person in a detention centre after that age, or
  - (b) in the case of a sentence for which a non-parole period has been set—the non-parole period will end within 6 months after the person has attained that age, or

- (c) in the case of a sentence for which a non-parole period has not been set—the term of the sentence of imprisonment will end within 6 months after the person has attained that age.

This subsection is subject to subsection (2).

- (4) In determining whether there are special circumstances for the purposes of subsection (3), the court may have regard to the following matters:
  - (a) the degree of vulnerability of the person,
  - (b) the availability of appropriate services or programs at the place the person will serve the sentence of imprisonment,
  - (c) any other matter that the court thinks fit.
- (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.

**[2] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*

**[3] Schedule 2, Part 7**

Insert after Part 6:

**Part 7 Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001**

**10 Application of amendments**

Section 19, as substituted by the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*:

- (a) applies to persons who are sentenced after the commencement of that Act, and

Schedule 1      Amendments

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(b) does not affect any order made before the commencement of that Act.

[Minister's second reading speech made in—  
Legislative Assembly on 30 November 2001  
Legislative Council on 13 December 2001]

BY AUTHORITY