

Passed by both Houses



New South Wales

Children (Detention Centres) Amendment (Serious Young Offenders Review Panel) Bill 2012

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Children (Detention Centres) Act 1987 No 57	3
Schedule 2 Amendment of Jury Act 1977 No 18	11

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, , 2012*



New South Wales

Children (Detention Centres) Amendment (Serious Young Offenders Review Panel) Bill 2012

Act No , 2012

An Act to amend the *Children (Detention Centres) Act 1987* to constitute the Serious Young Offenders Review Panel; 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.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children (Detention Centres) Amendment (Serious Young Offenders Review Panel) Act 2012*.

2 Commencement

- (1) This Act commences on the date of assent to this Act except as provided by subsection (2).
- (2) Schedule 2 commences on the commencement of Schedule 1 [22] to the *Jury Amendment Act 2010*.

Schedule 1 Amendment of Children (Detention Centres) Act 1987 No 57

[1] Section 3 Definitions

Omit the definitions of *Department* and *juvenile justice officer* from section 3 (1).

Insert in alphabetical order:

Department means the Department of Attorney General and Justice.

juvenile justice officer means a member of staff of the Department who is principally involved in the administration of this or any other Act administered by the Minister, and includes any member of staff of the Department who is in the branch of the Department known as Juvenile Justice.

Review Panel means the Serious Young Offenders Review Panel constituted by this Act.

[2] Section 24A Conditions of leave as to non-association and place restriction

Omit “of Juvenile Justice” from section 24A (2) (b).

[3] Section 29 Application of Crimes (Administration of Sentences) Act 1999 to detainees

Omit “of the Department of Juvenile Justice” from section 29 (1) (d).

[4] Part 4B

Insert after Part 4A:

Part 4B Serious Young Offenders Review Panel

37N Definitions

In this Part:

Director-General means:

- (a) the Chief Executive, Juvenile Justice, or
- (b) if there is no such position in the Department—the Director-General of the Department.

serious young offender means a detainee who has been convicted of a serious children’s indictable offence within the meaning of the *Children (Criminal Proceedings) Act 1987*.

37O Constitution of Review Panel

- (1) There is constituted by this Act the Serious Young Offenders Review Panel.
- (2) The Review Panel is to consist of at least 3, but not more than 6 members appointed by the Minister, of whom one is to be a Magistrate, acting Magistrate or retired Magistrate who is to be the Chairperson of the Review Panel.
- (3) Schedule 1A makes provision for the constitution and procedure of the Review Panel.

37P Functions of Review Panel

- (1) The Review Panel has such functions as are conferred on it by or under this or any other Act or law, including the following functions:
 - (a) providing advice and making recommendations to the Director-General with respect to the classification of serious young offenders who are referred to the Review Panel by the Director-General,
 - (b) providing advice and making recommendations to the Minister or the Director-General with respect to:
 - (i) any matter relating to a detainee (including a serious young offender) that is referred to the Review Panel by the Minister or the Director-General, or
 - (ii) any other matter that may be prescribed by the regulations.
- (2) The Minister or Director-General may refer a person or matter to the Review Panel individually or by reference to a class to which the person or matter belongs.

37Q Matters to be considered by Review Panel

- (1) The Review Panel must, when exercising its functions in relation to a person who is a serious young offender or other detainee, consider each of the following to the extent that the Review Panel considers it to be relevant:
 - (a) the public interest, including the protection of the public,
 - (b) the nature and circumstances of any offence committed by the person or, in the case of a person on remand, alleged to have been committed by the person,
 - (c) the reasons and recommendations of the court that sentenced the person,

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- (d) the criminal history of the person,
 - (e) the time the person has served in custody and the time the person has yet to serve in custody,
 - (f) the person's conduct while in custody,
 - (g) the person's commitment to address offending behaviour, including the person's willingness to participate in rehabilitation programs and the success or otherwise of any such participation,
 - (h) the person's classification history,
 - (i) the position of and consequences to any victim of the person, including the victim's family,
 - (j) any submissions made by any victims of the person,
 - (k) the need to maintain public confidence in the administration of criminal justice,
 - (l) the rehabilitation of the person and the re-entry of the person into the community as a law-abiding citizen,
 - (m) the availability to the person of family, departmental and other support,
 - (n) any relevant reports about the person (including reports made by counsellors, health practitioners or educational establishments) that are available to the Review Panel,
 - (o) any other matter that may be prescribed by the regulations.
- (2) The Review Panel may also consider any other matter that it considers to be relevant.
- (3) The regulations may specify how any matter is to be taken into consideration by the Review Panel under this section.

37R Annual reports

A report of the Review Panel's activities during a year is to be included in the annual report of the Department.

37S Security of certain information

Nothing in this Act or the regulations requires a person to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the person may, in the opinion of the Chairperson of the Review Panel:

- (a) adversely affect the security, discipline or good order of a detention centre, or
- (b) endanger the person or any other person, or

- (c) jeopardise the conduct of any lawful investigation, or
- (d) prejudice the public interest.

[5] Section 45 Regulations

Omit “with respect to:” from section 45 (1).
Insert instead “with respect to the following:”.

[6] Section 45 (1) (c)

Omit “detainees, and”. Insert instead “detainees,”.

[7] Section 45 (1) (e)

Insert after section 45 (1) (d):

- (e) the constitution, functions, and procedures of the Review Panel.

[8] Section 46 Savings and transitional provisions

Omit the section.

[9] Schedule 1A

Insert before Schedule 1:

Schedule 1A Serious Young Offenders Review Panel

(Section 37O)

Part 1 Preliminary

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the Review Panel.

Director-General has the same meaning as it has in Part 4B.

member means any member of the Review Panel.

Part 2 Constitution

2 Chairperson and acting Chairperson

- (1) Neither the appointment of a person who is a Magistrate as Chairperson or acting Chairperson, nor the person's service as Chairperson or acting Chairperson, affects:
 - (a) the person's tenure of the office of a Magistrate, or
 - (b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of the office of a Magistrate.
- (2) A person who is a Magistrate may exercise the powers of a Magistrate even though the person is Chairperson or acting Chairperson.
- (3) Service of a Magistrate as Chairperson or acting Chairperson is, for all purposes, taken to be service as a Magistrate.

3 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be the member.
- (2) A person may be appointed to act in the office of a member only if the person is qualified to be appointed to the particular office.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause.
- (4) A person, while acting in the office of a member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence from the office of the member.

4 Nominee of Director-General to attend meetings

- (1) A nominee of the Director-General is to attend meetings of the Review Panel but is not entitled to vote at any such meeting.
- (2) The function of the nominee is to provide advice to the Review Panel about policies and procedures of the Department and any other matter relating to the administration of juvenile justice.
- (3) The Review Panel is not to conduct a meeting in the absence of the nominee.

5 Term of office

Subject to this Schedule and the regulations, a member holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

6 Part-time appointments

Members hold office on a part-time basis.

7 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

8 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) ceases to hold the qualifications necessary for appointment to the office to which the member was appointed.
- (2) The Minister may remove a member from office at any time.

9 Filling of vacancy in office of member

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

10 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

11 Personal liability

A matter or thing done or omitted to be done by the Review Panel, a member of the Review Panel or a person acting under the direction of the Review Panel does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

Part 3 Procedure

12 General procedure

The procedure for the calling of meetings of the Review Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Director-General.

13 Quorum

The quorum for a meeting of the Review Panel is a majority of its members for the time being.

14 Presiding member

The Chairperson is to preside at a meeting of the Review Panel.

15 Voting

- (1) A decision supported by a majority of the votes cast at a meeting of the Review Panel at which a quorum is present is the decision of the Review Panel.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

16 Transaction of business outside meetings or by telephone

- (1) The Review Panel may, with the approval of the Director-General, transact any of its business by the circulation of papers among all the members of the Review Panel for the time being, and a resolution in writing approved in writing by a majority of the members is taken to be a decision of the Review Panel.
- (2) The Review Panel may, with the approval of the Director-General, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Review Panel.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Review Panel.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

[10] Schedule 1 Savings and transitional provisions

Omit "(Section 46)".

[11] Schedule 1, clause 1A (1)

Insert at the end of the subclause:

Children (Detention Centres) Amendment (Serious Young Offenders Review Panel) Act 2012

Schedule 2 Amendment of Jury Act 1977 No 18

Schedule 1 Persons excluded from jury service (as inserted by Schedule 1 [22] to the Jury Amendment Act 2010)

Insert after clause 7 (1) (d):

(d1) the Serious Young Offenders Review Panel,