



New South Wales

Children (Detention Centres) Amendment Act 2002 No 1

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Children (Detention Centres) Amendment Act 2002 No 1

Act No 1, 2002

An Act to amend the *Children (Detention Centres) Act 1987* with respect to the extension of the detention of a person subject to control if the person is unlawfully absent from custody; to amend certain other Acts; and for other purposes. [Assented to 9 April 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children (Detention Centres) Amendment Act 2002*.

2 Commencement

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

3 Amendment of Children (Detention Centres) Act 1987 No 57

The *Children (Detention Centres) Act 1987* is amended as set out in Schedules 1 and 2.

4 Amendment of other Acts

The Acts specified in Schedule 3 are amended as set out in that Schedule.

Schedule 1 Principal amendments

(Section 3)

[1] Section 38A

Insert after section 38:

38A Extension of term of detention order following unlawful absence

- (1) If a person subject to control is unlawfully absent from custody during the term of the detention order to which the person is subject:
 - (a) the term of the detention order, and
 - (b) if the absence occurs during a non-parole period of the term of the detention order—the non-parole period,are, by this section, extended by the period for which the person is unlawfully absent from custody.
- (2) For the purposes of this section, a person is unlawfully absent from custody if, and only if:
 - (a) the person has escaped from lawful custody, or
 - (b) the person has failed, without reasonable excuse, to return to a detention centre before the expiry of leave of absence granted to the person by order under section 24 (1) (a), or
 - (c) the person has failed, without reasonable excuse, to return to a detention centre following the revocation of an order that authorised the person's absence from the detention centre, or
 - (d) the person has failed, without reasonable excuse, to return to a detention centre in accordance with the requirements of section 25 (4) (relating to return from medical treatment).
- (3) This section applies to an unlawful absence from custody regardless of whether the person has been charged with or found guilty of an offence in connection with the absence. The application of this section does not prevent proceedings being taken against the person for such an offence.

- (4) This section does not apply to an unlawful absence from custody in respect of which the non-parole period or term of the person's detention order is extended by or under some other provision of this Act.
- (5) For the purposes of this section, unlawful absence from custody does not include any period during which the person is in lawful custody, whether or not in relation to the detention order to which the person is subject.
- (6) The date of commencement of any other detention order (the *later detention order*) that is to be served consecutively with a detention order whose term or non-parole period is extended by this section (the *earlier detention order*) is, by this subsection, postponed:
- (a) if the later detention order commences at the end of the non-parole period of the earlier detention order—by the period for which the non-parole period of the earlier detention order is extended, or
 - (b) if the later detention order commences at the expiry of the earlier detention order—by the period for which the term of the earlier detention order is extended.
- (7) As soon as practicable after a person whose detention order is extended by this section is returned to a detention centre, the centre manager is to give the person:
- (a) a written notice of the extension, and
 - (b) an explanation of the effect of the notice.
- A failure to comply with this subsection does not affect the validity of the extension of the detention order.
- (8) This section extends to a period of unlawful absence before the commencement of this section, but does not apply if the unlawful absence ceased, and the detainee was released on parole or discharged, before that commencement.

[2] Section 39A

Insert after section 39:

39A Delegation of functions

- (1) The Minister may delegate to the Director-General, or to any other person, the exercise of any of the Minister's functions under this Act or the regulations, other than this power of delegation.
- (2) The Director-General may delegate to any person the exercise of:
 - (a) any of the functions delegated under subsection (1) to the Director-General by the Minister, or
 - (b) any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.

Schedule 2 Amendments by way of statute law revision

(Section 3)

[1] Section 3 Definitions

Omit “a term” from paragraph (a) of the definition of *detention order* in section 3 (1).

Insert instead “the term of a sentence”.

[2] Section 21 Punishments for misbehaviour

Omit “each minimum or fixed term (within the meaning of the *Crimes (Sentencing Procedure) Act 1999*) to which the detainee is subject (other than a term which is cumulative and which has not commenced)” from section 21 (1) (e).

Insert instead “the non-parole period of any detention order, or the term of any detention order without a non-parole period, to which the detainee is subject (other than a detention order whose term is cumulative and that has not commenced)”.

[3] Section 21 (5)

Omit the subsection. Insert instead:

- (5) A penalty under subsection (1) (e) that extends the non-parole period of a person subject to control reduces by a corresponding period the remaining balance of the term of the detention order.

Schedule 3 Amendment of other Acts

(Section 4)

3.1 Child Protection (Offenders Registration) Act 2000 No 42

[1] Section 3 Definitions

Omit the definition of *detainee* from section 3 (1). Insert instead:

detainee means a person who:

- (a) is a detainee within the meaning of the *Children (Detention Centres) Act 1987*, or
- (b) is absent from a detention centre pursuant to an order in force under section 24 of that Act.

[2] Section 3 (4)

Insert after section 3 (3):

- (4) For the purposes of this Act, a person who is absent from a detention centre pursuant to an order in force under section 23 or 24 of the *Children (Detention Centres) Act 1987* is taken to be in custody.

3.2 Children (Community Service Orders) Act 1987 No 56

Section 31

Insert after section 30:

31 Delegation of functions

- (1) The Minister may delegate to the Director-General, or to any other person, the exercise of any of the Minister's functions under this Act or the regulations, other than this power of delegation.
- (2) The Director-General may delegate to any person the exercise of:
 - (a) any of the functions delegated under subsection (1) to the Director-General by the Minister, or
 - (b) any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.

3.3 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 33A Cumulative or concurrent orders etc

Insert at the end of the section:

- (5) Subsections (2) and (3) are subject to section 57 of the *Crimes (Sentencing Procedures) Act 1999*, as applied by section 33C.

[2] Section 33C Application of Crimes (Sentencing Procedure) Act 1999 to children

Insert at the end of section 33C (b):

, and

- (c) a reference in those provisions to an escape from lawful custody committed by the offender while an inmate of a correctional centre included a reference to an escape from lawful custody committed by the offender while a detainee of a detention centre.

[3] Section 37 Term of control order

Omit “section 32” from section 37 (3). Insert instead “sections 32 and 38A”.

[Second reading speech made in—
Legislative Assembly on 27 February 2002
Legislative Council on 20 March 2002]