

## CHILDREN (DETENTION CENTRES) AMENDMENT BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Children (Detention Centres) Act 1987 to—

- (a) provide that certain persons aged 16 or over who are not suitable for detention in a detention centre may be transferred to a prison; and
  - (b) replace the concept of “absconding” from a detention centre with a new offence of breaching conditions of leave or failing to return after leave or medical treatment; and
  - (c) remove existing restrictions on the type of work which a detainee may be ordered to carry out; and
  - (d) increase the period for which certain detainees may be confined as a punishment for misbehaviour from 3 hours to 24 hours; and
  - (e) vary the conditions subject to which detainees may be punished by confinement or segregated for their protection or that of other detainees; and
  - (f) prohibit the granting of leave to be absent from a detention centre to a person on remand and to allow a person on remand to be absent from a detention centre only in special circumstances; and
  - (g) restrict the purposes for which a person subject to control may be granted leave to be absent from a detention centre; and
  - (h) prohibit the supply to detainees of alcohol, tobacco and certain video tapes and films; and
  - (i) create new offences with respect to:
    - unlawfully bringing alcohol, drugs or other things into a detention centre
    - unlawfully entering a detention centre or communicating with a detainee
    - disclosing information obtained in the administration of the Act; and
  - (j) remove a detainee’s right of appeal to the Director-General against a finding that the detainee is guilty of misbehaviour.
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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the Children (Detention Centres) Act 1987.

**Clause 4** repeals sections 9A and 33A of the Children (Criminal Proceedings) Act 1987 which are to be substantially re-enacted by Schedule 1 (12) to the Bill (remand or transfer to prison). Consequential amendments are also made to that Act.

### SCHEDULE 1—AMENDMENTS

#### Complaints of misbehaviour

The Bill amends section 20 of the Principal Act (dealing with complaints about and punishment of misbehaviour by detainees) so as to:

- remove the requirement that guilt be established “beyond reasonable doubt” before action can be taken, so that in future it will only be necessary that the person to whom a complaint is made is “satisfied” as to guilt
- remove provisions which enable appeals against decisions on complaints of misbehaviour

(Schedule 1 (6)).

#### Remand or transfer to prison

The Bill inserts proposed sections 28A–28F into the Principal Act which re-enact with procedural modifications the provisions of sections 9A and 33A of the Children (Criminal Proceedings) Act 1987. The new sections will provide a procedure for the remand or transfer to prison of certain persons who are aged 16 or over and who would be detained in a detention centre but who are unsuitable for detention there. (Schedule 1 (12)).

In the case of remand, the child must have been charged with an indictable offence or be a detainee detained for an indictable offence who has been charged with a detention centre offence.

In the case of transfer of a detainee, the detainee must have been detained for an indictable offence then be detained for a detention centre offence.

The proposed provisions enable the prosecutor, or the Director-General, to apply for the remand or transfer of the person to prison.

The court can remand or transfer to prison only if of the opinion that the person is not suitable for detention in a detention centre. The court is given guidance as to how to determine “suitability” for a detention centre by being required to have regard to:

- the nature of the offence
- the likelihood of danger to the community, officers or other detainees
- previous behaviour of the person which might indicate a problem in managing the person in a detention centre
- the availability of suitable accommodation in prison

#### Failure to comply with leave conditions, return from leave etc.

The Bill creates a new offence of failing without reasonable excuse to comply with a condition of leave of absence, to return after leave expires or to return after medical treatment. Such an offence also constitutes misbehaviour.

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The new offence replaces provisions which in those circumstances deem a detainee to have escaped from lawful custody. Accordingly the concept of "absconding" is removed from the Principal Act.

Consequential amendments are made to enable the Director-General to order the arrest of a detainee who has done anything which constitutes an offence under the new provision.

**(Schedule 1 (1) (b), (11), (17), (18)).**

#### **Work to be performed by detainees**

The Bill substitutes subsection (1) of section 18 of the Principal Act which presently prohibits a superintendent of a detention centre ordering a detainee to carry out work unless it is of a certain type (such as housekeeping). Substituted subsection (1) will empower a superintendent to order a detainee to perform any work that is reasonable (in view of the detainee's physical and intellectual capacity), is safe and does not conflict with the detainee's religious beliefs or educational programmes. **(Schedule 1 (4)).**

#### **Segregation and confinement of detainees**

The Bill amends section 19 of the Principal Act (which provides for detainees to be segregated for their protection or that of other detainees) so as to:

- remove the requirement that the place where a detainee is kept segregated be of at least the same standard as the rest of the detention centre
- remove the requirement that a detainee must be able to see and be seen by an officer at all times and provide instead that a detainee must have a readily available means of communication with an officer

**(Schedule 1 (5)).**

#### **Punishment for misbehaviour**

The Bill amends section 21 of the Principal Act (which provides for the confinement of detainees as a punishment for misbehaviour) so as to:

- increase the period for which a detainee may be confined from 3 hours to 24 hours if the detainee is 16 or over **(Schedule 1 (7) (a))**
- remove the requirement that the place where the detainee is confined be of at least the same standard as the rest of the detention centre **(Schedule 1 (7) (b))**
- remove the requirement that a detainee must be able to see and be seen by an officer at all times and provide instead that a detainee must have a readily available means of communication with an officer **(Schedule 1 (7) (c))**
- modify the prohibition on punishments interfering with a detainee's visits so that punishments cannot interfere with visits by lawyers and other prescribed persons but can interfere with other visits if the superintendent thinks they are a risk to security or order **(Schedule 1 (7) (d))**

In addition the Bill removes the prohibition on denying telephone calls to detainees who are confined. **(Schedule 1 (8)).**

#### **Escorted absence and leave from detention centre**

The Bill substitutes section 23 of the Principal Act. The substituted section will prohibit leave to be absent from a detention centre being granted to a person on remand.

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The Bill inserts new section 23A into the Principal Act under which the Director-General will be able to allow persons on remand or other detainees to be absent for certain purposes, including attending the funeral of a close relative. The person must be escorted by an officer while absent.

**(Schedule 1 (9)).**

The Bill also amends section 24 of the Principal Act which presently confers on the Director-General a wide discretion to grant leave to be absent from a detention centre to a person subject to control. As amended the section will restrict the purposes for which leave may be granted to purposes related to employment, education, vocational training, visiting close relatives who are seriously ill or rehabilitation of the person concerned. The amendment will also enable the Director-General to revoke an order. **(Schedule 1 (10)).**

**Prohibition on supply of tobacco, alcohol etc.**

The Bill inserts a new section 17A into the Principal Act which will provide that a superintendent of a detention centre:

- must not allow detainees to be supplied with tobacco or alcohol
- must not allow in a detention centre a film or video tape which is "R" rated or refused a censor's classification

**(Schedule 1 (3)).**

**Offences**

The Bill inserts sections 37B–37D into the Principal Act which create the following new offences:

- bringing into a detention centre without lawful authority, or delivering to a detainee, any alcohol, drug or other thing (proposed section 37B)
- entering a detention centre or communicating with a detainee without lawful authority (proposed section 37C)
- disclosing information obtained in the administration of the Principal Act unless done with the consent of the person providing the information, in connection with the administration of the Act or for the purposes of legal proceedings (proposed section 37D)

**(Schedule 1 (17)).**

The Bill also substitutes section 34 of the Principal Act which makes it an offence to help a detainee to escape from a detention centre. As substituted the section imposes a maximum penalty of \$1,000 or imprisonment for 12 months with no distinction between children and other persons (at present, children are liable to a lesser penalty). **(Schedule 1 (18)).**

**Savings and transitional provisions**

The Bill enacts a Schedule of savings and transitional provisions consequent on the enactment of the proposed Act. **(Schedule 1 (21)).**

**Other amendments**

The Bill also makes minor or consequential amendments to the Principal Act.

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