

[Act 2002 No 1]



New South Wales

Children (Detention Centres) Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Children (Detention Centres) Act 1987* (*the Act*) to provide for the extension of the detention of a person subject to control if the person is unlawfully absent from custody. The amendments will provide for the extension of the term of a detention order and any non-parole period by the period of time that the person is unlawfully absent from custody.

This Bill also provides for the delegation of certain functions of the Minister for Juvenile Justice and the Director-General of the Department of Juvenile Justice. Prior to the creation of the separate portfolio of juvenile justice, ministerial and departmental delegations were specifically authorised under section 5 of the *Community Welfare Act 1987*.

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 or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Children (Detention Centres) Act 1987* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 3.

Schedule 1 Principal amendments

Extension of term of detention order

Schedule 1 [1] inserts section 38A into the Act.

Proposed section 38A (1) provides that, by the operation of the section, the term and any non-parole period of the detention order of a person subject to control are extended by any period that the person is unlawfully absent from custody.

Proposed section 38A (2) limits the operation of the section to unlawful absences involving an escape, a failure to return from leave and continued absence after the revocation of any parole order or any other order authorising an absence from a detention centre.

Proposed section 38A (3) applies the proposed section to absences whether or not criminal proceedings are instituted for an offence.

Proposed section 38A (4) provides that the section does not apply to an absence for which the detention order has been extended by another provision of the Act.

Proposed section 38A (5) ensures that any lawful custody of a person who is absent (whether or not in connection with the detention order) is not taken into account under the section.

Proposed section 38A (6) provides that the date of commencement of any other detention order that is to be served consecutively with the extended term of a detention order is postponed by the period of the extension.

Proposed section 38A (7) provides that a person must be given notice of the extension of a detention order that the person is subject to.

Proposed section 38A (8) makes a transitional provision dealing with unlawful absences before the commencement of the proposed section.

Powers of delegation

Schedule 1 [2] provides for certain powers of delegation.

Proposed section 39A (1) provides the Minister for Juvenile Justice with the power to delegate the exercise of any of the Minister's functions under the Act or the regulations.

Proposed section 39A (2) provides the Director-General of the Department of Juvenile Justice with the power to delegate the exercise of any of the Director-General's functions under the Act or the regulations.

Schedule 2 Amendments by way of statute law revision

Schedule 2 [1], [2] and [3] make amendments in the nature of statute law revision to update outdated terms.

Schedule 3 Amendment of other Acts

Schedule 3.1 makes amendments to the *Child Protection (Offenders Registration) Act 2000*.

Schedule 3.1 [1] amends the definition in that Act of *detainee* to include a person who is absent from a detention centre pursuant to an order in force under section 24 of the *Children (Detention Centres) Act 1987*.

Schedule 3.1 [2] provides that 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.

Schedule 3.2 provides for certain powers of delegation under the *Children (Community Service Orders) Act 1987*.

Proposed section 31 (1) provides the Minister for Juvenile Justice with the power to delegate the exercise of any of the Minister's functions under the Act or the regulations.

Proposed section 31 (2) provides the Director-General of the Department of Juvenile Justice with the power to delegate the exercise of any of the Director-General's functions under the Act or the regulations.

Schedule 3.3 makes amendments to the *Children (Criminal Proceedings) Act 1987*.

Schedule 3.3 [1] and **[2]** ensure that, in the application of adult sentencing procedures to children subject to detention, any further period of detention imposed for an escape from detention is served after, and not at the same time as, the balance of the term of the original detention order (as extended for the period of any unlawful absence from custody).

Schedule 3.3 [3] makes an amendment as a consequence of the amendments to the *Children (Detention Centres) Act 1987* in Schedule 1.