



New South Wales

Children (Detention Centres) Amendment Bill 2008

Explanatory note

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

This Bill is cognate with the *Courts and Crimes Legislation Amendment Bill 2008*.

Overview of Bill

The object of this Bill is to amend the *Children (Detention Centres) Act 1987* so as:

- (a) to ensure that certain persons who are the subject of arrest warrants are not to be detained in detention centres, and
- (b) to clarify the provisions of that Act with respect to the separate detention of different classes of detainees, and
- (c) to clarify the provisions of that Act with respect to the transfer of detainees from detention centres to correctional centres, and
- (d) to make other minor, consequential and ancillary amendments.

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Children (Detention Centres) Act 1987* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Persons not to be detained in detention centres

Schedule 1 [3] inserts proposed section 9A into the Act. The proposed section provides that persons who are 21 or over are not to be detained in a detention centre if they are subject to an arrest warrant of any kind, and that persons who are between 18 and 21 are not to be detained in a detention centre if they are subject to an arrest warrant issued in relation to an alleged breach of a good behaviour bond, probation or community service order or an alleged escape from custody.

Separation of detainees

Schedule 1 [4] inserts proposed subsections (3), (4) and (5) into section 16 of the Act. The new subsections empower the Director-General of the Department of Juvenile Justice to direct that different detainees or groups of detainees be separately accommodated, and ensure that their separate accommodation is not prevented by anything in the *Anti-Discrimination Act 1977*. **Schedule 1 [5]** makes a consequential amendment to section 19 of the Act.

Schedule 1 [12] inserts proposed paragraph (q2) into section 32A (a regulation-making power). The new paragraph enables regulations to be made with respect to the review of directions given by the Director-General under proposed section 16 (3).

Transfer of detainees

Schedule 1 [8] substitutes subsection (1A) of section 28 of the Act so as to make it clear that a transfer order can be made under that section regardless of whether or where the detainee is currently in custody.

Schedule 1 [9] substitutes subsection (2A) of section 28 of the Act so as to provide two new grounds for making a transfer order with respect to a detainee who is between 18 and 21 years of age. One of those grounds is that the detainee has been at the detention centre for at least 6 months and the Director-General is satisfied that it would be preferable for the detainee to be at a correctional centre. The other ground is that the detainee is, or has previously been, at a correctional centre (other than a juvenile correctional centre) for more than 4 weeks.

Schedule 1 [10] inserts proposed subsections (2C) and (2D) into section 28 of the Act. Proposed subsection (2C) provides that subsection (2) (which restricts the power to transfer a detainee who is under 18) does not apply to a detainee who has

previously been transferred to a correctional centre during his or her current period of detention. Proposed subsection (2D) provides that subsection (2A) (which restricts the power to transfer a detainee who is over 18 but under 21) does not apply to a detainee who has previously been transferred to a correctional centre during his or her current period of detention or during any previous period of detention. **Schedule 1 [11]** makes a consequential amendment to section 28 (3) (b) of the Act.

Miscellaneous amendments

Schedule 1 [1] amends section 3 of the Act so as to provide that notes in the Act (such as the note at the end of proposed section 9A) do not form part of the Act.

Schedule 1 [2] amends section 7 (1) of the Act so as to extend the period between successive Departmental inspections of a detention centre from 3 months to 12 months.

Schedule 1 [6] amends section 21 (1) (b) of the Act so as to enable detainees who are being punished for misbehaviour to be restricted from participation in sport or leisure activities for an unlimited period of time, rather than 4 days as is currently the case.

Schedule 1 [7] inserts proposed subsection (1A) into section 21 of the Act so as to provide that any such restriction cannot be for more than 7 days at a time except with the prior approval of the Director-General.

Schedule 1 [12] inserts proposed paragraph (q1) into section 32A (a regulation-making power). The new paragraph enables regulations to be made with respect to the circumstances in which detainees may be confined to their rooms, and the periods for which they may be so confined.

First print



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New South Wales

Children (Detention Centres) Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Children (Detention Centres) Act 1987* in relation to the detention and transfer of juvenile offenders; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Children (Detention Centres) Amendment Act 2008</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of Children (Detention Centres) Act 1987 No 57	6
The <i>Children (Detention Centres) Act 1987</i> is amended as set out in Schedule 1.	7 8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert after section 3 (4):	4
	(5) Notes included in this Act do not form part of this Act.	5
[2]	Section 7 Inspection of detention centres by juvenile justice officer appointed by Director-General	6
	Omit “3 months” from section 7 (1). Insert instead “12 months”.	7
[3]	Section 9A	9
	Insert after section 9:	10
	9A Certain persons not to be detained in detention centres	11
	(1) A person who is of or above the age of 21 years is not to be detained in a detention centre if he or she is the subject of an arrest warrant of any kind.	12
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	(2) A person who is of or above the age of 18 years, but under the age of 21 years, is not to be detained in a detention centre if he or she is the subject of an arrest warrant of any of the following kinds:	15
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	(a) a warrant issued under section 41 of the <i>Children (Criminal Proceedings) Act 1987</i> in relation to an alleged breach of a good behaviour bond or an alleged breach of probation, or	18
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	(b) a warrant issued under section 23 of the <i>Children (Community Service Orders) Act 1987</i> in relation to an alleged breach of a children’s community service order, or	22
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	(c) a warrant issued under section 98 of the <i>Crimes (Sentencing Procedure) Act 1999</i> in relation to an alleged breach of a condition of a good behaviour bond, or	25
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	(d) his or her arrest under section 39 of the <i>Crimes (Administration of Sentences) Act 1999</i> in relation to an alleged escape from custody, or	28
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	(e) a warrant issued under section 116 of the <i>Crimes (Administration of Sentences) Act 1999</i> in relation to an alleged breach of a community service order.	31
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	Note. Pursuant to Part 13 of the <i>Crimes (Administration of Sentences) Act 1999</i> , persons referred to in section 9A may be detained in a correctional centre.	34
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[4] Section 16 Separation of detainees	1
Insert after section 16 (2):	2
(3) For the purpose of ensuring the security, safety and good order of a detention centre, the Director-General may direct that different detainees or groups of detainees be detained separately from other detainees.	3 4 5 6
(4) While a direction referred to in subsection (3) is in force, the detainees or groups of detainees identified in the direction shall, so far as is reasonably practicable, be detained separately from other detainees in the same detention centre.	7 8 9 10
(5) Detainees may be dealt with in accordance with this section despite anything to the contrary in the <i>Anti-Discrimination Act 1977</i> .	11 12 13
[5] Section 19 Segregation of detainees for protection	14
Insert after section 19 (4):	15
(5) Nothing in this section limits the circumstances in which detainees may be detained separately pursuant to section 16.	16 17
[6] Section 21 Punishments for misbehaviour	18
Omit “for a period not exceeding 4 days” from section 21 (1) (b).	19
[7] Section 21 (1A)	20
Insert after section 21 (1):	21
(1A) A detainee may not be restricted from participation in sport or leisure activities for more than 7 days at a time except with the prior approval of the Director-General, whether given generally or in relation to a particular detainee.	22 23 24 25
[8] Section 28 Transfer of older detainees from detention centres to correctional centres	26 27
Omit section 28 (1A). Insert instead:	28
(1A) An order may be made under subsection (1) regardless of whether or where the detainee is currently in custody.	29 30
[9] Section 28 (2A)	31
Omit the subsection. Insert instead:	32
(2A) In the case of a detainee who is of or above the age of 18 years, but under the age of 21 years, an order may not be made under subsection (1) unless:	33 34 35

(a)	the Children’s Court makes an order authorising the making of such an order, or	1 2
(b)	the detainee has been detained in a detention centre for at least 6 months and the Director-General has assessed that, having regard to all of the circumstances, it would be preferable for the detainee to be detained in a correctional centre, or	3 4 5 6 7
(c)	the detainee is, or has previously been, detained as an inmate in a correctional centre (other than a juvenile correctional centre) for a period of, or periods totalling, more than 4 weeks, or	8 9 10 11
(d)	the detainee applies to the Director-General in writing for the detainee’s transfer to a correctional centre, or	12 13
(e)	one or more of the circumstances referred to in subsection (2) applies in relation to the detainee.	14 15
[10]	Section 28 (2C) and (2D)	16
	Insert after section 28 (2B):	17
(2C)	Subsection (2) does not apply to a detainee in respect of whom an order under subsection (1) has previously been made in relation to a current period of detention.	18 19 20
(2D)	Subsection (2A) does not apply to a detainee in respect of whom an order under subsection (1) has previously been made, whether in relation to a current period of detention or an earlier period of detention.	21 22 23 24
[11]	Section 28 (3) (b)	25
	Omit “a convicted inmate”. Insert instead “an inmate”.	26

[12] Section 32A Regulations

Insert after section 32A (q):

- (q1) the circumstances in which detainees may be confined to their rooms, and the periods for which they may be so confined,
- (q2) the review of directions given by the Director-General under section 16 (3),

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