

Act No. 57

CHILDREN (DETENTION CENTRES) BILL 1987*

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Community Welfare Bill 1987.

The object of this Bill is to re-enact, with modifications, the provisions of Part X of the Community Welfare Act 1982, being the provisions of that Act that relate to the treatment of children and other persons on remand and subject to control.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 defines certain expressions for the purposes of the proposed Act, in particular, the expressions "classified person", "detainee", "detention order", "person on remand" and "person subject to control".

Clause 4 sets out the objects of the proposed Act. It also provides that, in the administration of the proposed Act, the welfare and interests of persons on remand and persons subject to control shall be given paramount consideration.

* Amended in committee—see table at end of volume.

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PART 2—DETENTION CENTRES

Clause 5 provides that the Minister may, by order published in the Gazette, declare any premises to be a detention centre for the purposes of the proposed Act, and further provides that the regulations under the proposed Act may provide for different classes of detention centre.

Clause 6 provides that the Director-General of the Department of Youth and Community Services ("the Director-General") shall have the control and management of all detention centres.

Clause 7 provides for the inspection of detention centres, at least once every 3 months, by officers of the Department of Youth and Community Services.

Clause 8 provides that any Judge of the Supreme Court or District Court, any Magistrate and any member of the Children's Court may inspect any detention centre at any time.

PART 3—PERSONS ON REMAND AND PERSONS SUBJECT TO CONTROL

DIVISION 1—*Admission to detention centres*

Clause 9 requires persons on remand and persons subject to control to be detained in detention centres, except in a limited number of situations in which certain persons may be detained in police stations pending the commencement of proceedings.

Clause 10 enables prisoners (within the meaning of the Prisons Act 1952) who are under the age of 21 years to be transferred to detention centres for the purpose of serving their sentences of imprisonment in detention centres rather than in prisons.

Clause 11 requires the Director-General to determine the detention centre at which a person is to be detained, to endorse the relevant detention order with the name and address of the detention centre so determined and to send an endorsed copy of the order to the superintendent of that detention centre.

Clause 12 provides that a detention order with respect to a person is sufficient authority for the conveyance of the person to, and the detention of the person in, the detention centre determined as referred to in clause 11, and further provides that a person shall be deemed to be in lawful custody while being conveyed to such a detention centre.

Clause 13 provides for the transfer of persons between different detention centres.

DIVISION 2—*Treatment of detainees*

Clause 14 requires the Director-General to ensure that adequate arrangements exist—

- (a) to maintain the physical, psychological and emotional well-being of detainees;
- (b) to promote the social, cultural and educational development of detainees;
- (c) to maintain discipline and good order among detainees; and
- (d) to facilitate the proper control and management of detention centres.

Clause 15 provides that the superintendent of a detention centre has the custody of all detainees who are required to be detained in the detention centre.

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Clause 16 enables the regulations under the proposed Act to prescribe different classes of detainee, and further provides for the separate detention of detainees of different prescribed classes.

Clause 17 enables the superintendent of a detention centre to control, in accordance with the regulations under the proposed Act, the manner in which detainees may deal with their private property.

Clause 18 imposes certain restrictions on the kind of work or activity that a detainee may be required to carry out, and further provides that a detainee who is required to carry out any work or activity outside a detention centre shall be deemed to be in lawful custody while outside the detention centre.

Clause 19 enables the superintendent of a detention centre to order the segregation of a detainee for the purpose of protecting the personal safety of that or any other detainee, or of any other person, and further provides for the manner in which such a segregation shall be effected.

Clause 20 specifies the procedure to be followed in relation to the making of complaints concerning the misbehaviour of detainees, and further provides for the manner in which any such complaint shall be heard and determined and for appeals against decisions made in relation to any such complaint.

Clause 21 specifies the various punishments that may be imposed on a detainee in relation to misbehaviour of which the detainee has been found guilty.

Clause 22 prohibits detainees from being subjected to specified kinds of ill-treatment and provides that a person who is guilty of an offence of ill-treating a detainee is liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

DIVISION 3—Miscellaneous

Clause 23 enables persons on remand to be granted leave of absence from a detention centre for a limited number of specified purposes and provides that a person who fails to return to a detention centre within 7 days after a leave of absence expires shall be deemed to have absconded from lawful custody.

Clause 24 enables persons subject to control to be—

- (a) granted leave of absence;
- (b) removed from a detention centre and placed in the care of a person nominated by the Director-General; or
- (c) discharged from detention,

and provides that a person who fails to return to a detention centre within 7 days after a leave of absence expires shall be deemed to have absconded from lawful custody.

Clause 25 enables detainees to be removed to hospital for medical treatment and provides that a detainee who is removed to hospital shall be deemed to be in lawful custody while absent from the detention centre. It further provides that a detainee who fails to return to a detention centre after having been discharged from a hospital shall be deemed to have absconded from lawful custody.

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Clause 26 applies section 41 (5), (6) and (7) of the Prisons Act 1952 to classified persons.

Clause 27 applies section 463 of the Crimes Act 1900 to classified persons.

Clause 28 provides for the transfer from a detention centre to a prison of a classified person who is unsuitable for detention in a detention centre.

Clause 29 provides for the granting of remission to be determined in accordance with the regulations under the proposed Act.

Clause 30 requires a detainee to be discharged from a detention centre at the end of the period for which he or she is required to be detained in a detention centre.

Clause 31 provides that a person may be discharged from a detention centre within the period of 24 hours prior to the time when the person would otherwise be entitled to be discharged, and further provides that a person who would otherwise be entitled to be discharged on a Saturday, Sunday or public holiday may be discharged on an earlier day.

Clause 32 specifies when a detention order ceases to have effect.

PART 4—OFFENCES RELATING TO ABSCONDING

Clause 33 imposes a penalty of 3 months' imprisonment on any detainee who absconds or attempts to abscond from lawful custody, and further provides that the detainee's period of detention shall be extended by the corresponding period of 3 months.

Clause 34 imposes a penalty of \$250 or 3 months' imprisonment, or both (in the case of a child), and \$1,000 or 12 months' imprisonment, or both (in the case of an adult), on any person who aids a detainee in absconding or attempting to abscond from a detention centre.

Clause 35 imposes a penalty of \$1,000 or 12 months' imprisonment, or both, on any person who rescues or attempts to rescue a detainee from lawful custody.

Clause 36 imposes a penalty of 7 years' imprisonment on an officer or a member of the police force who wilfully permits a detainee to abscond from lawful custody.

Clause 37 imposes a penalty of \$1,000 or 3 years' imprisonment on a person who knowingly harbours, maintains or employs a detainee whom the person knows to have absconded from lawful custody.

PART 5—MISCELLANEOUS

Clause 38 provides for the arrest of detainees who have absconded from custody, or who are absent from a detention centre otherwise than in accordance with the proposed Act, and for their return to detention centres.

Clause 39 requires returns to be furnished to the Supreme Court, the District Court and the Children's Court in respect of all persons detained in detention centres for trial or appeal for the purpose of enabling those courts to expedite trials and appeals.

Clause 40 is an evidentiary provision regarding the admissibility and proof of certain orders under the proposed Act.

Clause 41 specifies how offences against the proposed Act shall be dealt with.

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Clause 42 enables any court of record, judge of such a court, a person constituting such a court or a coroner to require the attendance of a detainee before it or him or her in relation to any legal proceedings, inquest or inquiry.

Clause 43 preserves the Royal prerogative of mercy.

Clause 44 saves the functions of the Sheriff.

Clause 45 enables the Governor-in-Council to make regulations for the purposes of the proposed Act.
