



New South Wales

# Children (Detention Centres) Amendment Bill 2006

## 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* so as:

- (a) to enable the Director-General of the Department of Juvenile Justice (*the Director-General*) to make use of the services of the Commissioner of Corrective Services (*the Commissioner*) with respect to the handling of riots and disturbances at detention centres, and
  - (b) to make provision with respect to the transfer of detainees from detention centres to correctional centres, and
  - (c) to increase the time for which detainees may be segregated or isolated from other detainees, and
  - (d) to make provision with respect to the provision of medical treatment to persons who are detained in detention centres, and
  - (e) to make provision with respect to the functions of Justice Health in relation to the care of persons who are detained in detention centres, and
  - (f) to make provision with respect to the testing of juvenile justice officers for alcohol and prohibited drugs, and
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(g) to make other provision of a minor, consequential or ancillary nature.

The Bill also makes minor and consequential amendments to the *Children (Criminal Proceedings) Act 1987*, the *Crimes (Administration of Sentences) Act 1999* and the *Freedom of Information Act 1989*.

## 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 that gives effect to the amendments to the *Children (Detention Centres) Act 1987* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to other Acts set out in Schedule 2.

**Clause 5** 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 Amendment of Children (Detention Centres) Act 1987

### Handling of riots and disturbances at detention centres

**Schedule 1 [10]** inserts a new section 26. The proposed section provides that:

- (a) the Director-General may enter into a memorandum of understanding with the Commissioner with respect to the handling of riots and disturbances at detention centres (**proposed subsection (1)**), and
- (b) the Director-General may, in accordance with any such memorandum, request assistance from the Commissioner to deal with any such riot or disturbance at a detention centre (**proposed subsection (2)**), and
- (c) the Commissioner, and any correctional officer authorised by the Commissioner, may deal with a riot or disturbance in respect of which such a request has been made as if it were a riot or disturbance in a correctional centre, for which purpose the Commissioner is to have the control and management of the detention centre (**proposed subsection (3)**), and
- (d) dogs may be used to assist in the maintenance of good order and security (**proposed subsection (4)**), and
- (e) control and management of a detention centre is to be returned to the Director-General as soon as good order and security have been restored (**proposed subsection (5)**), and

- (f) the Director-General is not to exercise any function in relation to a detention centre while its control and management belong to the Commissioner, as referred to in proposed subsection (3) (**proposed subsection (6)**), and
- (g) a request under proposed subsection (2) may relate to part only of a detention centre (**proposed subsection (7)**).

**Schedule 1 [3]** makes a consequential amendment to section 6.

### **Transfer of detainees**

Section 28 currently enables detainees who are over 16 to be transferred from a detention centre to a juvenile correctional centre (part of the adult correctional system), but only if they have previously been transferred to the detention centre from a correctional centre, are on remand for a serious offence, have been sent to the detention centre by a court other than the Children's Court or have severe behavioural problems.

**Schedule 1 [14]** amends section 28 (2) so as to provide that the transfer of a detainee who is under 18 can be effected only in the circumstances referred to above.

**Schedule 1 [15]** inserts a new section 28 (2A) that provides that the transfer of a detainee who is between 18 and 21 can be effected not only in those circumstances but also if the Children's Court authorises the transfer or the detainee requests the transfer. A consequential effect of these amendments is that detainees who are over 21 will be able to be transferred without any restriction.

**Schedule 1 [13]** inserts a new section 28 (1A) which makes it clear that a transfer order may be made in relation to a detainee who is absent from, or has not yet been received at, a detention centre. The effect of this amendment is that detainees who are over the age of 21 (such as those who have been arrested following revocation of their parole) can be taken directly to a correctional centre rather than to a detention centre.

**Schedule 1 [12]** amends section 28 (1) and (3) so as to enable transfers to be made to any correctional centre. However, **Schedule 1 [15]** inserts a new section 28 (2B) that requires detainees who are under 18 to be transferred to a juvenile correctional centre (that is, a correctional centre established for juveniles).

### **Segregation and isolation of detainees**

Section 19 enables detainees to be segregated for their own protection for up to 6 hours in any period of 24 hours. **Schedule 1 [7]** amends section 19 so as to allow for segregation for an indefinite period if the Director-General so approves.

Section 21 enables detainees to be isolated for up to 3 hours (in the case of detainees under 16) or 12 hours (in the case of detainees 16 or over) by way of punishment for misbehaviour. **Schedule 1 [8]** amends section 21 so as to increase the maximum periods of isolation to 12 hours and 24 hours, respectively.

### **Medical treatment**

**Schedule 1 [11]** inserts a new section 27. The proposed section requires detainees to be provided with appropriate medical treatment, and allows them to be given medical treatment without their consent if it is necessary for the purpose of saving life or preventing serious damage to health.

### **Justice Health**

**Schedule 1 [18]** inserts provisions with respect to the functions of Justice Health, a statutory corporation established to provide health services in correctional centres (**proposed Part 4A, Division 1**).

**Proposed section 37E** provides for Justice Health to have the same functions in relation to detainees as it has in relation to the inmates of a correctional centre.

**Proposed section 37F** provides for Justice Health to have the same rights of access to detention centres, detainees and their medical records as it has in relation to correctional centres, inmates and their medical records.

**Proposed section 37G** provides for the appointment of medical officers for detention centres, and requires statistical records to be kept of the health services provided to detainees.

**Proposed section 37H** enables the Chief Executive Officer of Justice Health to delegate his or her functions under the Act.

### **Drug and alcohol testing of staff**

**Schedule 1 [18]** inserts provisions with respect to the testing of juvenile justice officers for alcohol and prohibited drugs (**proposed Part 4A, Division 2**). These provisions are substantially identical to similar provisions with respect to the testing of correctional officers contained in the *Crimes (Administration of Sentences) Act 1999*.

**Proposed section 37I** defines certain words and expressions for the purposes of the proposed Division.

**Proposed section 37J** enables a juvenile justice officer who is on duty or on site in a detention centre to be required to submit to a breath analysis or to provide a sample for the purpose of testing for drugs and alcohol.

**Proposed section 37K** enables a juvenile justice officer who has been taken to hospital following an incident in which a person has been injured or died to provide a sample for the purpose of testing for drugs and alcohol.

**Proposed section 37L** protects doctors and nurses from liability for taking samples for the purposes of the Act.

**Proposed section 37M** extends the range of matters for which regulations may be made so as to include certain matters for which regulations can be made under the *Crimes (Administration of Sentences) Act 1999*. The matters concerned deal with specific aspects of the matters dealt with by the proposed Division.

### **Miscellaneous amendments**

**Schedule 1 [16]** inserts a new section 32A. The proposed section extends the range of matters for which regulations may be made so as to include certain matters for which regulations can be made under the *Crimes (Administration of Sentences) Act 1999*. The matters concerned deal with specific aspects of the management, control, administration and supervision of detention centres, such as visits, the making and receiving of telephone calls, the conduct of searches, the use of force and the testing of detainees for drugs and alcohol.

**Schedule 1 [6]** amends section 14 so as to require the Director-General to consult with, and have regard to the recommendations of, the Director-General of the Department of Health in relation to matters concerning a detainee who is a forensic patient within the meaning of the *Mental Health Act 1990*.

**Schedule 1 [1]** inserts new definitions of *Chief Executive Officer, Justice Health, correctional officer, Justice Health* and *medical officer*, and a new definition of *juvenile justice officer* (to replace the existing definition of *officer*), into section 3 (1). **Schedule 1 [2]** omits the definition of *officer*. **Schedule 1 [4], [5], [9], [17] and [19]–[21]** amend various sections to replace references to “officer” with references to “juvenile justice officer” (to distinguish them from references elsewhere to “correctional officer”).

**Schedule 1 [22] and [23]** enact savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of other Acts**

### **Amendment of Children (Criminal Proceedings) Act 1987**

**Schedule 2.1 [1]** amends section 19 so as to ensure that nothing in that section, or in any order under that section, limits the operation of section 28 of the *Children (Detention Centres) Act 1987*. Consequently, that section and the orders under it, will not prevent detainees from being transferred to a correctional centre pursuant to the proposed amendments to section 28 (to be effected by **Schedule 1 [12]–[15]**). **Schedule 2.1 [2]** makes a consequential amendment to the note to section 19 (1).

### **Amendment of Crimes (Administration of Sentences) Act 1999**

**Schedule 2.2 [1]** amends the definition of *section 28 juvenile inmate* in section 41A so as to restrict the definition to persons who are under 18. The effect of this amendment will be to allow inmates who are 18 or over, and who have been transferred to a juvenile correctional centre pursuant to section 28 of the *Children (Detention Centres) Act 1987*, to be subsequently transferred into the general prison population.

**Schedule 2.2 [2]** amends section 253 (which states that Part 13, dealing with the temporary custody of persons required to be kept in custody, is subject to the *Children (Detention Centres) Act 1987*) so as to provide that section 253 does not limit the operation of Part 13 in relation to persons over 21.

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**Amendment of Freedom of Information Act 1989**

**Schedule 2.3** amends Schedule 1 so as to provide that documents created by the Drug Intelligence Unit of the Department of Juvenile Justice are exempt documents for the purposes of the Act.