

Juvenile Offenders Legislation Amendment Bill 2004

New South Wales

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 (Criminal Proceedings) Act 1987*, the *Children (Detention Centres) Act 1987* and the *Crimes (Administration of Sentences) Act 1999* so as:

- (a) to enable offenders who are dealt with under the *Children (Criminal Proceedings) Act 1987* (otherwise than by the Children's Court) to be required to serve any sentence of imprisonment imposed on them either at a detention centre or at a proposed juvenile correctional centre, and
- (b) to modify the scheme established under the *Children (Detention Centres) Act 1987* for the transfer of juvenile offenders between detention centres and correctional centres, and
- (c) to provide for the management of juvenile offenders within the correctional centre system under the *Crimes (Administration of Sentences) Act 1999*, including, in particular, the establishment of juvenile correctional centres within that system.

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 (Criminal Proceedings) Act 1987* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Children (Detention Centres) Act 1987* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 3.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987

Schedule 1 [2] amends section 19 of the Act so that an order under that section will require a sentence of imprisonment imposed by a court to be served "as a juvenile offender" rather than, as is currently the case, "in a detention centre". As referred to in the note to be inserted in section 19 by **Schedule 1 [3]**, this amendment removes any implication that the sentence must be served at a detention centre, and supports the scheme whereby young offenders may, in accordance with the proposed amendments to the *Children (Detention Centres) Act 1987*, be transferred to a proposed juvenile correctional centre. **Schedule 1 [1]** is a consequential amendment that ensures that the proposed note does not form part of the Act.

Schedule 1 [4] further amends section 19 of the Act to ensure that the warrant of commitment that is issued in connection with a sentence of imprisonment the subject of an order under that section is appropriately addressed.

Schedule 1 [5] amends Schedule 2 to the Act so as to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [6] further amends Schedule 2 so as to enact savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Children (Detention Centres) Act 1987

Transfers of juvenile inmates from correctional centres to detention centres

Schedule 2 [5] substitutes section 10 of the Act. The new section allows juvenile inmates of a correctional centre to be transferred to a detention centre by order of the Minister administering the *Crimes (Administration of Sentences) Act 1999* made with the consent of the Minister administering the *Children (Detention Centres) Act 1987* (an existing power) and also allows juvenile inmates of a juvenile correctional centre to be transferred by order of the Commissioner of Corrective Services made with the consent of the Director-General of the Department of Juvenile Justice (a new power). The Commissioner may only exercise the new power in relation to juvenile inmates who have previously been transferred to the correctional centre system from a detention centre. Existing provisions concerning the effect of a transfer on the transferee are continued.

Schedule 2 [4] makes a consequential amendment to section 3 of the Act.

Transfers of older detainees from detention centres to juvenile correctional centres

Schedule 2 [8] substitutes section 28 of the Act. The new section allows older detainees (that is, detainees who are over 16) to be transferred to a juvenile correctional centre by order of the Director-General of the Department of Juvenile Justice made with the consent of the Commissioner of Corrective Services. This replaces the existing scheme under which transfers to a correctional centre are effected by order of the Minister administering the *Children (Detention Centres) Act 1987* made with the consent of the Minister administering the *Crimes (Administration of Sentences) Act 1999*. Such an order will not be able to be made unless the detainee has previously been transferred to a detention centre from a correctional centre, is on remand for a serious children's indictable offence, has been committed to a detention centre under section 19 of the *Children (Criminal Proceedings) Act 1987* or has behaved in a way that warrants transfer. Existing provisions concerning the effect of a transfer on the transferee are continued.

Schedule 2 [2] makes consequential amendments to section 3.

Miscellaneous amendments

Schedule 2 [11] amends section 28BA of the Act to clarify that a person who serves a term of imprisonment in a correctional centre as a consequence of having committed a detention centre offence must remain in custody in a correctional centre for any unexpired portion of a detention order and for the remainder of any period of remand to which he or she is subject. **Schedule 2 [12]** further amends section 28BA so as to omit provisions that allow the Children's Court to direct that the person be returned to a detention centre.

Schedule 2 [3] amends section 3 as a consequence of the amendments to section 19 of the *Children (Criminal Proceedings) Act 1987* that are made by **Schedule 1 [2]**.

Schedule 2 [1], [6], [7], [9], [10], [13], [14] and [15] make law revision amendments to sections 3, 17, 24, 28A, 28B, 28E, 28F and 32 in relation to certain nomenclature.

Schedule 2 [16] amends Schedule 1 to the Act so as to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 2 [17] further amends Schedule 1 so as to insert a new Part heading.

Schedule 2 [18] further amends Schedule 1 so as to enact savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Crimes (Administration of Sentences) Act 1999

Establishment of juvenile correctional centres

Schedule 3 [8] inserts proposed section 225A into the Act. The new section enables the Governor to declare a correctional centre to be a juvenile correctional centre for the purposes of the Act. **Schedule 3 [1] and [2]** make consequential amendments to section 3 (containing the definitions used in the Act).

Treatment of juvenile inmates

Schedule 3 [5] inserts proposed Division 3A into Part 2 of the Act. The new Division

contains the following provisions:

Proposed section 41A defines, for the purposes of the proposed Division, the expressions **adult correctional centre** (meaning a correctional centre that is not a juvenile correctional centre), **juvenile inmate** (meaning an inmate who is under the age of 21 years) and **section 28 juvenile inmate** (meaning a juvenile inmate who has been transferred to a juvenile correctional centre under proposed section 28 of the *Children (Detention Centres) Act 1987*).

Proposed section 41B requires a section 28 juvenile inmate to be held in custody in a juvenile correctional centre, subject to the Act.

Proposed section 41C deals with the transfer of juvenile inmates between juvenile and adult correctional centres. Transfers “down” (from an adult to a juvenile correctional centre) are effected by an order by the Commissioner of Corrective Services. Transfers “up” (from a juvenile to an adult correctional centre) are effected by an order by the Minister administering the Act. An order for a transfer up cannot be made except on the recommendation of the Commissioner (in the case of a juvenile inmate who is over 18) or the Serious Offenders Review Council (in the case of a juvenile inmate who is under 18). In either case, a recommendation cannot be made unless the Commissioner or Review Council, as the case may be, is satisfied that the inmate wants to be transferred, that the inmate’s behaviour is such as to warrant the transfer, that the transfer is in the inmate’s best interests or that the inmate is a security threat.

Proposed section 41D sets out the procedure to be followed for the purpose of obtaining a recommendation from the Serious Offenders Review Council for the purposes of proposed section 41C. The Commissioner must apply for an inquiry. The juvenile inmate the subject of the inquiry is entitled to be heard, and to be legally represented. For the purposes of the inquiry, the Review Council must co-opt a Children’s Magistrate or former Children’s Magistrate or a legal practitioner of 7 years’ standing who has experience as a children’s advocate (unless such a person is already a member of the Review Council and is available for the inquiry). The co-opted person has all of the powers and immunities of a member of the Review Council.

Schedule 3 [3] amends section 23 of the Act (which deals with the transfer of inmates) so as to prevent juvenile inmates who are under the age of 18 years from being transferred to adult correctional centres except in restricted circumstances. The transfer of these inmates to adult correctional centres will be wholly governed by proposed section 41C.

Schedule 3 [7] amends section 197 of the Act (which lists the functions of the Serious Offenders Review Council) so as to ensure that the section reflects the functions being conferred on the Review Council under proposed Division 3A of Part 2.

Schedule 3 [4] and [6] make consequential amendments to sections 38 and 72 of the Act.