



New South Wales

Correctional Centres Amendment Bill 1997

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 *Correctional Centres Act 1952*:

- (a) to specify who has custody of an inmate while the inmate is absent from a correctional centre, and
- (b) to enable a person while in lawful custody to be given into the keeping of a correctional officer engaged in court security or escort duties, and
- (c) to provide that in such circumstances a person designated by the Commissioner of Corrective Services is taken to have custody of the person and to have the powers of the governor of a correctional centre in relation to the person.

The Bill also amends the *Periodic Detention of Prisoners Act 1981* to allow correctional officers to take identifying particulars of persons who are the subject of orders for periodic detention.

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 *Correctional Centres Act 1952* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Periodic Detention of Prisoners Act 1981* set out in Schedule 2.

Schedule 1 Amendment of Correctional Centres Act 1952

Custody of inmates while absent from correctional centres

Currently, section 29A of the Principal Act provides that, in certain circumstances when an inmate is absent from a correctional centre, the inmate is taken to continue to be in the custody of the governor of the correctional centre. **Schedule 1 [2]** substitutes section 29A of the Principal Act to include other circumstances authorised by the Act where an inmate is absent from a correctional centre, for example, where an inmate is removed from a correctional centre to another correctional centre, or from part of a correctional centre to other premises that form part of that correctional centre, or where an inmate is removed to a hospital for treatment. The new section also provides that if the inmate is being escorted by a correctional officer of a correctional centre, the inmate is taken to be in the custody of the governor of that correctional centre. If the inmate is being escorted by a correctional officer not employed in a particular correctional centre, the inmate is taken to be in the custody of a person designated by the Commissioner of Corrective Services.

Schedule 1 [1] and **[9]** contain consequential amendments.

Persons in custody may be kept in court cells during transit

Schedule 1 [3] inserts proposed section 29D into the Principal Act to enable persons in lawful custody in certain circumstances to be accommodated in court cells, lock-ups or police stations during transit if it is necessary or convenient to do so.

Offences in places of detention

At present, Part 7 of the Principal Act contains offences relating to the unauthorised introduction of articles (including drugs, syringes and implements to aid escapes) into a correctional centre. **Schedule 1 [4]–[8]** extend those offences to places where a person is kept in lawful custody in certain specified circumstances (for example while awaiting trial or during court proceedings).

Management of persons in lawful custody

Schedule 1 [10] inserts proposed section 42A into the Principal Act which allows a person to be transferred into the keeping of certain correctional officers during specified circumstances when the person is in lawful custody and to be kept in a correctional centre, lock-up, police station, court cell or any other place specified by a court. A person is taken to be in the custody of an officer designated by the Commissioner of Corrective Services while in such keeping and the designated officer has all the powers of a governor of a correctional centre in relation to the person as if the person were an inmate. Regulations may be made limiting the powers of the designated officer and the additional rights of an inmate conferred on the person in custody.

The proposed section enables a warrant or court order committing a person to lawful custody to be executed by a correctional officer engaged in court security or escort duties even though the warrant or order on the face of it may authorise some other officer to execute it.

Other minor amendments

Schedule 1 [11] contains an amendment by way of statute law revision.

Schedule 1 [12] enables regulations to be made of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Periodic Detention of Prisoners Act 1981

Schedule 2 amends the *Periodic Detention of Prisoners Act 1981* to enable correctional officers to take identifying particulars of a person where a court authorises the particulars to be taken on the making of an order for periodic detention in respect of the person. At present this power is restricted to police officers and other persons that a court specifically authorises.

First print



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New South Wales

Correctional Centres Amendment Bill 1997

No , 1997

A Bill for

An Act to amend the *Correctional Centres Act 1952* with respect to the custody of persons and in other respects; and to amend the *Periodic Detention of Prisoners Act 1981* with respect to the taking of identifying particulars of a person who is the subject of an order for periodic detention.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Correctional Centres Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Correctional Centres Act 1952 No 9

The *Correctional Centres Act 1952* is amended as set out in Schedule 1.

4 Amendment of Periodic Detention of Prisoners Act 1981 No 18 10

The *Periodic Detention of Prisoners Act 1981* is amended as set out in Schedule 2.

Schedule 1 Amendment of Correctional Centres Act 1952

(Section 3)

[1] Section 20 Work to be performed by inmates

Omit “and while so beyond such precinct shall be deemed to be within the correctional centre” from section 20 (2). 5

[2] Section 29A

Omit the section. Insert instead:

29A Absent inmates taken to be in custody

- (1) An inmate is, while absent from a correctional centre and not being escorted by a correctional officer, taken to be in the custody of the governor of the correctional centre. 10
- (2) An inmate is, while absent from a correctional centre and being escorted by a correctional officer, taken to be in the custody of: 15
 - (a) the governor of the correctional centre in which the correctional officer is employed, or
 - (b) the designated officer, if the correctional officer is not employed in a particular correctional centre.
- (3) Any failure by an inmate who is absent from a correctional centre to return to lawful custody: 20
 - (a) at the end of the period authorised for the absence, or
 - (b) on the revocation of the order or permission authorising the absence, 25

is taken to be an escape within the meaning of section 34.

Correctional Centres Amendment Bill 1997

Schedule 1 Amendment of Correctional Centres Act 1952

- (4) In this section, a reference to an inmate being absent from a correctional centre is a reference to an inmate:
- (a) while permitted to be temporarily absent from a correctional centre as referred to in section 12 (2), or 5
 - (b) while at work beyond the precinct of a correctional centre as referred to in section 20 (2), or
 - (c) while being transferred from a correctional centre to another correctional centre under section 27, or 10
 - (d) while removed from a correctional centre to a hospital as referred to in section 28, or
 - (e) while taken temporarily from a correctional centre, or permitted to be temporarily absent from a correctional centre, as referred to in section 29 (1) or (2), or 15
 - (f) while absent in accordance with a permit issued under section 29AC, or
 - (g) while being transferred from one part of a correctional centre to another part of the correctional centre that is located on separate premises. 20
- (5) In this section:
- correctional officer*** means:
- (a) a correctional officer engaged in court security or escort duties, or 25
 - (b) a person employed on a temporary basis within the Department of Corrective Services to perform court security or escort duties, or
 - (c) a person holding an authority under section 31C authorising the person to perform escort duties. 30
- designated officer*** means a person designated by the Commissioner for the purposes of this section, whether designated generally or for a particular case.

[3] Section 29D

Insert at the end of Division 3 of Part 5:

29D Places where persons in custody may be kept during transfer

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|-----|---|----|
| (1) | This section applies to a person who is in lawful custody: | 5 |
| (a) | before being brought before a Justice or court in connection with the alleged commission of an offence, or | |
| (b) | during proceedings to determine whether the person has committed an offence or while such proceedings are pending, or | 10 |
| (c) | following a grant of bail but before the person has fulfilled the necessary requirements entitling the person to be released, or | |
| (d) | during any period for which the person is on remand, or | 15 |
| (e) | while awaiting sentencing for an offence or during sentencing proceedings, or | |
| (f) | after the person is sentenced for an offence, or | |
| (g) | as referred to in section 7 (2) of the <i>Periodic Detention of Prisoners Act 1981</i> , or | 20 |
| (h) | in accordance with a warrant of commitment or other warrant, or an order of a court, | |
| | and who is being transferred from premises to other premises. | 25 |
| (2) | A person to whom this section applies may be accommodated in a court cell, lock-up or police station if it is necessary or convenient to do so. | |
| (3) | This section is subject to the <i>Children (Detention Centres) Act 1987</i> . | 30 |

[4] Section 31K

Insert before section 32:

31K Definition

In this Part, *place of detention* means a place where a person is kept in lawful custody: 5

- (a) before being brought before a Justice or court in connection with the alleged commission of an offence, or
- (b) during proceedings to determine whether the person has committed an offence or while such proceedings are pending, or 10
- (c) following a grant of bail but before the person has fulfilled the necessary requirements entitling the person to be released, or
- (d) during any period for which the person is on remand, or 15
- (e) while awaiting sentencing for an offence or during sentencing proceedings, or
- (f) after the person is sentenced for an offence, or
- (g) as referred to in section 7 (2) of the *Periodic Detention of Prisoners Act 1981*, or 20
- (h) in accordance with a warrant of commitment or other warrant, or an order of a court,

and includes any vehicle or vessel in which the person is being conveyed in any of the circumstances referred to in the preceding paragraphs, but does not include a detention centre within the meaning of the *Children (Detention Centres) Act 1987*. 25

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- [5] **Sections 33 (b), 37 (1), (1A), (1C) and (2) and 38 (1) (a), (c), (d) and (e)**
 Omit "correctional centre or correctional complex" wherever occurring.
 Insert instead "place of detention". 5
- [6] **Section 35 Permitting escape**
 Omit "officer of a correctional centre" from section 35 (1).
 Insert instead "officer of a place of detention".
- [7] **Section 37A Introduction or supply of syringes**
 Omit "a correctional centre" from section 37A (1) (a), (2) and (3) (b) wherever occurring. 10
 Insert instead "a place of detention".
- [8] **Section 37A (2) and (3) (b)**
 Omit "governor of the correctional centre" wherever occurring.
 Insert instead "officer in charge of the place of detention". 15
- [9] **Section 37A (5)**
 Insert "(within the meaning of that section)" after "correctional officer".
- [10] **Section 42A**
 Insert after section 42: 20
- 42A Transport and custody of persons in connection with proceedings**
- (1) A person who is in lawful custody:
- (a) before being brought before a Justice or court in connection with the alleged commission of an offence, or 25
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- (b) during proceedings to determine whether the person has committed an offence or while such proceedings are pending, or
 - (c) following a grant of bail but before the person has fulfilled the necessary requirements entitling the person to be released, or 5
 - (d) during any period for which the person is on remand or awaiting sentencing for an offence, during sentencing proceedings, or during any period after the person is sentenced for an offence, but before the person is delivered to the governor of a correctional centre, or 10
 - (e) as referred to in section 7 (2) of the *Periodic Detention of Prisoners Act 1981*, or
 - (f) in accordance with a warrant of commitment or other warrant, or an order of a court, 15

may be given into the keeping of a correctional officer.
 - (2) A correctional officer into whose keeping a person has been given under this section:
 - (a) may convey the person to any correctional centre, lock-up, police station or court cell, or to any other place in accordance with a direction of a court, and 20
 - (b) may detain the person in the correctional centre, lock-up, police station, court cell or other place. 25
 - (3) While a person is in the keeping of a correctional officer in accordance with this section, the person is taken to be in the custody of the designated officer.
 - (4) Subject to the regulations:
 - (a) the designated officer has, in relation to a person taken to be in the officer's custody by virtue of this section, all the powers and duties that the governor of a correctional centre has in relation to an inmate, and 30

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- (b) a person taken to be in the designated officer's custody by virtue of this section has all the rights of an inmate.
- (5) Subsection (4) (b) does not affect any other right that the person in custody may have apart from that paragraph. 5
- (6) The regulations may:
- (a) limit the powers and duties of the designated officer in relation to persons taken to be in the custody of the designated officer by virtue of this section, and 10
- (b) limit the rights that a person in custody has under subsection (4) (b).
- (7) A warrant of commitment or other warrant, or an order of a court, authorising the detention of a person or the conveyance of a person to a place of detention authorises a correctional officer to convey the person to the place of detention referred to in the warrant or order. 15
- (8) In this section:
- correctional officer*** means:
- (a) a correctional officer engaged in court security or escort duties, or 20
- (b) a person employed on a temporary basis within the Department of Corrective Services to perform court security or escort duties, or
- (c) a person holding an authority under section 31C authorising the person to perform escort duties. 25
- designated officer*** means a person designated by the Commissioner for the purposes of this section, whether designated generally or for a particular case.
- (9) This section is subject to the *Children (Detention Centres) Act 1987*. 30
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Schedule 1 Amendment of Correctional Centres Act 1952

[11] Section 50 Regulations

Omit "gaol" from section 50 (1) (l) and (m) wherever occurring.
Insert instead "correctional centre".

[12] Schedule 8 Savings and transitional provisions

Insert "*Correctional Centres Amendment Act 1997*" at the end of 5
clause 1 (1).

Schedule 2 Amendment of Periodic Detention of Prisoners Act 1981

(Section 4)

[1] Section 5AA Power to order taking of photographs and fingerprints

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Omit "or by a person" from section 5AA (2).

Insert instead "or a correctional officer, or by any other person".

[2] Section 5AA (6)

Insert before the definition of *identifying particulars*:

correctional officer means:

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(a) a correctional officer, within the meaning of the *Correctional Centres Act 1952*, engaged in court security or escort duties, or

(b) a person employed on a temporary basis within the Department of Corrective Services to perform court security or escort duties.

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