



New South Wales

Children (Detention Centres) Amendment Bill 2002

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* (***the Act***) to provide for the extension of the detention of a person subject to control if the person is unlawfully absent from custody. The amendments will provide for the extension of the term of a detention order and any non-parole period by the period of time that the person is unlawfully absent from custody.

This Bill also provides for the delegation of certain functions of the Minister for Juvenile Justice and the Director-General of the Department of Juvenile Justice. Prior to the creation of the separate portfolio of juvenile justice, ministerial and departmental delegations were specifically authorised under section 5 of the *Community Welfare Act 1987*.

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 *Children (Detention Centres) Act 1987* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 3.

Schedule 1 Principal amendments

Extension of term of detention order

Schedule 1 [1] inserts section 38A into the Act.

Proposed section 38A (1) provides that, by the operation of the section, the term and any non-parole period of the detention order of a person subject to control are extended by any period that the person is unlawfully absent from custody.

Proposed section 38A (2) limits the operation of the section to unlawful absences involving an escape, a failure to return from leave and continued absence after the revocation of any parole order or any other order authorising an absence from a detention centre.

Proposed section 38A (3) applies the proposed section to absences whether or not criminal proceedings are instituted for an offence.

Proposed section 38A (4) provides that the section does not apply to an absence for which the detention order has been extended by another provision of the Act.

Proposed section 38A (5) ensures that any lawful custody of a person who is absent (whether or not in connection with the detention order) is not taken into account under the section.

Proposed section 38A (6) provides that the date of commencement of any other detention order that is to be served consecutively with the extended term of a detention order is postponed by the period of the extension.

Proposed section 38A (7) provides that a person must be given notice of the extension of a detention order that the person is subject to.

Proposed section 38A (8) makes a transitional provision dealing with unlawful absences before the commencement of the proposed section.

Powers of delegation

Schedule 1 [2] provides for certain powers of delegation.

Proposed section 39A (1) provides the Minister for Juvenile Justice with the power to delegate the exercise of any of the Minister's functions under the Act or the regulations.

Proposed section 39A (2) provides the Director-General of the Department of Juvenile Justice with the power to delegate the exercise of any of the Director-General's functions under the Act or the regulations.

Schedule 2 Amendments by way of statute law revision

Schedule 2 [1], [2] and [3] make amendments in the nature of statute law revision to update outdated terms.

Schedule 3 Amendment of other Acts

Schedule 3.1 makes amendments to the *Child Protection (Offenders Registration) Act 2000*.

Schedule 3.1 [1] amends the definition in that Act of *detainee* to include a person who is absent from a detention centre pursuant to an order in force under section 24 of the *Children (Detention Centres) Act 1987*.

Schedule 3.1 [2] provides that a person who is absent from a detention centre pursuant to an order in force under section 23 or 24 of the *Children (Detention Centres) Act 1987* is taken to be in custody.

Schedule 3.2 provides for certain powers of delegation under the *Children (Community Service Orders) Act 1987*.

Proposed section 31 (1) provides the Minister for Juvenile Justice with the power to delegate the exercise of any of the Minister's functions under the Act or the regulations.

Proposed section 31 (2) provides the Director-General of the Department of Juvenile Justice with the power to delegate the exercise of any of the Director-General's functions under the Act or the regulations.

Schedule 3.3 makes amendments to the *Children (Criminal Proceedings) Act 1987*.

Schedule 3.3 [1] and **[2]** ensure that, in the application of adult sentencing procedures to children subject to detention, any further period of detention imposed for an escape from detention is served after, and not at the same time as, the balance of the term of the original detention order (as extended for the period of any unlawful absence from custody).

Schedule 3.3 [3] makes an amendment as a consequence of the amendments to the *Children (Detention Centres) Act 1987* in Schedule 1.



New South Wales

Children (Detention Centres) Amendment Bill 2002

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Children (Detention Centres) Act 1987 No 57	2
4 Amendment of other Acts	2
Schedules	
1 Principal amendments	3
2 Amendments by way of statute law revision	6
3 Amendment of other Acts	7



New South Wales

Children (Detention Centres) Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend the *Children (Detention Centres) Act 1987* with respect to the extension of the detention of a person subject to control if the person is unlawfully absent from custody; to amend certain other Acts; 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 2002</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Children (Detention Centres) Act 1987 No 57	7
The <i>Children (Detention Centres) Act 1987</i> is amended as set out in Schedules 1 and 2.	8 9
4 Amendment of other Acts	10
The Acts specified in Schedule 3 are amended as set out in that Schedule.	11 12

Schedule 1	Principal amendments	1
	(Section 3)	2
[1]	Section 38A	3
	Insert after section 38:	4
	38A Extension of term of detention order following unlawful absence	5
	(1) If a person subject to control is unlawfully absent from custody during the term of the detention order to which the person is subject:	6
		7
		8
	(a) the term of the detention order, and	9
	(b) if the absence occurs during a non-parole period of the term of the detention order—the non-parole period,	10
	are, by this section, extended by the period for which the person is unlawfully absent from custody.	11
		12
		13
	(2) For the purposes of this section, a person is unlawfully absent from custody if, and only if:	14
		15
	(a) the person has escaped from lawful custody, or	16
	(b) the person has failed, without reasonable excuse, to return to a detention centre before the expiry of leave of absence granted to the person by order under section 24 (1) (a), or	17
		18
		19
		20
	(c) the person has failed, without reasonable excuse, to return to a detention centre following the revocation of an order that authorised the person’s absence from the detention centre, or	21
		22
		23
		24
	(d) the person has failed, without reasonable excuse, to return to a detention centre in accordance with the requirements of section 25 (4) (relating to return from medical treatment).	25
		26
		27
		28
	(3) This section applies to an unlawful absence from custody regardless of whether the person has been charged with or found guilty of an offence in connection with the absence. The application of this section does not prevent proceedings being taken against the person for such an offence.	29
		30
		31
		32
		33

- (4) This section does not apply to an unlawful absence from custody in respect of which the non-parole period or term of the person’s detention order is extended by or under some other provision of this Act. 1
2
3
4
- (5) For the purposes of this section, unlawful absence from custody does not include any period during which the person is in lawful custody, whether or not in relation to the detention order to which the person is subject. 5
6
7
8
- (6) The date of commencement of any other detention order (the *later detention order*) that is to be served consecutively with a detention order whose term or non-parole period is extended by this section (the *earlier detention order*) is, by this subsection, postponed: 9
10
11
12
13
- (a) if the later detention order commences at the end of the non-parole period of the earlier detention order—by the period for which the non-parole period of the earlier detention order is extended, or 14
15
16
17
- (b) if the later detention order commences at the expiry of the earlier detention order—by the period for which the term of the earlier detention order is extended. 18
19
20
- (7) As soon as practicable after a person whose detention order is extended by this section is returned to a detention centre, the centre manager is to give the person: 21
22
23
- (a) a written notice of the extension, and 24
- (b) an explanation of the effect of the notice. 25
- A failure to comply with this subsection does not affect the validity of the extension of the detention order. 26
27
- (8) This section extends to a period of unlawful absence before the commencement of this section, but does not apply if the unlawful absence ceased, and the detainee was released on parole or discharged, before that commencement. 28
29
30
31

[2] Section 39A	1
Insert after section 39:	2
39A Delegation of functions	3
(1) The Minister may delegate to the Director-General, or to any other person, the exercise of any of the Minister's functions under this Act or the regulations, other than this power of delegation.	4 5 6 7
(2) The Director-General may delegate to any person the exercise of:	8
(a) any of the functions delegated under subsection (1) to the Director-General by the Minister, or	9 10 11
(b) any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.	12 13 14

Schedule 2	Amendments by way of statute law revision	1
		2
	(Section 3)	3
[1]	Section 3 Definitions	4
	Omit “a term” from paragraph (a) of the definition of <i>detention order</i> in section 3 (1).	5
	Insert instead “the term of a sentence”.	6
		7
[2]	Section 21 Punishments for misbehaviour	8
	Omit “each minimum or fixed term (within the meaning of the <i>Crimes (Sentencing Procedure) Act 1999</i>) to which the detainee is subject (other than a term which is cumulative and which has not commenced)” from section 21 (1) (e).	9
	Insert instead “the non-parole period of any detention order, or the term of any detention order without a non-parole period, to which the detainee is subject (other than a detention order whose term is cumulative and that has not commenced)”.	10
		11
		12
		13
		14
		15
		16
[3]	Section 21 (5)	17
	Omit the subsection. Insert instead:	18
	(5) A penalty under subsection (1) (e) that extends the non-parole period of a person subject to control reduces by a corresponding period the remaining balance of the term of the detention order.	19
		20
		21
		22

Schedule 3	Amendment of other Acts	1
	(Section 4)	2
3.1	Child Protection (Offenders Registration) Act 2000 No 42	3
[1]	Section 3 Definitions	4
	Omit the definition of <i>detainee</i> from section 3 (1). Insert instead:	5
	<i>detainee</i> means a person who:	6
	(a) is a detainee within the meaning of the <i>Children (Detention Centres) Act 1987</i> , or	7
		8
	(b) is absent from a detention centre pursuant to an order in force under section 24 of that Act.	9
		10
[2]	Section 3 (4)	11
	Insert after section 3 (3):	12
	(4) For the purposes of this Act, a person who is absent from a detention centre pursuant to an order in force under section 23 or 24 of the <i>Children (Detention Centres) Act 1987</i> is taken to be in custody.	13
		14
		15
		16

3.2 Children (Community Service Orders) Act 1987 No 56	1
Section 31	2
Insert after section 30:	3
31 Delegation of functions	4
(1) The Minister may delegate to the Director-General, or to any other person, the exercise of any of the Minister's functions under this Act or the regulations, other than this power of delegation.	5 6 7 8
(2) The Director-General may delegate to any person the exercise of:	9 10
(a) any of the functions delegated under subsection (1) to the Director-General by the Minister, or	11 12
(b) any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.	13 14 15
3.3 Children (Criminal Proceedings) Act 1987 No 55	16
[1] Section 33A Cumulative or concurrent orders etc	17
Insert at the end of the section:	18
(5) Subsections (2) and (3) are subject to section 57 of the <i>Crimes (Sentencing Procedures) Act 1999</i> , as applied by section 33C.	19 20

[2] Section 33C Application of Crimes (Sentencing Procedure) Act 1999 to children	1
	2
Insert at the end of section 33C (b):	3
, and	4
(c) a reference in those provisions to an escape from lawful custody committed by the offender while an inmate of a correctional centre included a reference to an escape from lawful custody committed by the offender while a detainee of a detention centre.	5
	6
	7
	8
	9
[3] Section 37 Term of control order	10
Omit “section 32” from section 37 (3). Insert instead “sections 32 and 38A”.	11