

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the Courts and Crimes Legislation Amendment Bill 2008.

Overview of Bill

The object of this Bill is to amend the Children (Detention Centres) Act 1987 so as:

- (a) to ensure that certain persons who are the subject of arrest warrants are not to be detained in detention centres, and
- (b) to clarify the provisions of that Act with respect to the separate detention of different classes of detainees, and
- (c) to clarify the provisions of that Act with respect to the transfer of detainees from detention centres to correctional centres, and
- (d) to make other minor, consequential and ancillary amendments.

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 the date of assent.

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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 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 Amendments

Persons not to be detained in detention centres

Schedule 1 [3] inserts proposed section 9A into the Act. The proposed section provides that persons who are 21 or over are not to be detained in a detention centre if they are subject to an arrest warrant of any kind, and that persons who are between 18 and 21 are not to be detained in a detention centre if they are subject to an arrest warrant issued in relation to an alleged breach of a good behaviour bond, probation or community service order or an alleged escape from custody.

Separation of detainees

Schedule 1 [4] inserts proposed subsections (3), (4) and (5) into section 16 of the Act. The new subsections empower the Director-General of the Department of Juvenile Justice to direct that different detainees or groups of detainees be separately accommodated, and ensure that their separate accommodation is not prevented by anything in the Anti-Discrimination Act 1977. Schedule 1 [5] makes a consequential amendment to section 19 of the Act.

Schedule 1 [12] inserts proposed paragraph (q2) into section 32A (a regulation-making power). The new paragraph enables regulations to be made with respect to the review of directions given by the Director-General under proposed section 16 (3).

Transfer of detainees

Schedule 1 [8] substitutes subsection (1A) of section 28 of the Act so as to make it clear that a transfer order can be made under that section regardless of whether or where the detainee is currently in custody.

Schedule 1 [9] substitutes subsection (2A) of section 28 of the Act so as to provide two new grounds for making a transfer order with respect to a detainee who is between 18 and 21 years of age. One of those grounds is that the detainee has been at the detention centre for at least 6 months and the Director-General is satisfied that it would be preferable for the detainee to be at a correctional centre. The other ground is that the detainee is, or has previously been, at a correctional centre (other than a juvenile correctional centre) for more than 4 weeks.

Schedule 1 [10] inserts proposed subsections (2C) and (2D) into section 28 of the Act. Proposed subsection (2C) provides that subsection (2) (which restricts the power to transfer a detainee who is under 18) does not apply to a detainee who has

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previously been transferred to a correctional centre during his or her current period of detention. Proposed subsection (2D) provides that subsection (2A) (which restricts the power to transfer a detainee who is over 18 but under 21) does not apply to a detainee who has previously been transferred to a correctional centre during his or her current period of detention or during any previous period of detention. Schedule 1 [11] makes a consequential amendment to section 28 (3) (b) of the Act.

Miscellaneous amendments

Schedule 1 [1] amends section 3 of the Act so as to provide that notes in the Act (such as the note at the end of proposed section 9A) do not form part of the Act.

Schedule 1 [2] amends section 7 (1) of the Act so as to extend the period between successive Departmental inspections of a detention centre from 3 months to 12 months.

Schedule 1 [6] amends section 21 (1) (b) of the Act so as to enable detainees who are being punished for misbehaviour to be restricted from participation in sport or leisure activities for an unlimited period of time, rather than 4 days as is currently the case.

Schedule 1 [7] inserts proposed subsection (1A) into section 21 of the Act so as to provide that any such restriction cannot be for more than 7 days at a time except with the prior approval of the Director-General.

Schedule 1 [12] inserts proposed paragraph (q1) into section 32A (a regulation-making power). The new paragraph enables regulations to be made with respect to the circumstances in which detainees may be confined to their rooms, and the periods for which they may be so confined.