

JUVENILE JUSTICE LEGISLATION AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The legislation enables the transfer of the responsibility of youth detention centres from the Queensland Corrective Services Commission to the Department of Families, Youth and Community Care.

The Bill contains the provisions to ensure the administrative transfer of detention centres, detention centre staff and related management and administration, from the Queensland Corrective Services Commission.

It amends the *Corrective Services (Administration) Act 1988* by removing provisions relating to the administration of detention centres, and the *Juvenile Justice Act 1992* by inserting provisions relating to the administration of detention centres. The Bill amends the terminology in both Acts to maintain operational consistency.

Reasons for the Bill

A 1998 election commitment of the Government was to integrate the responsibility for the delivery of the juvenile justice system within the Department of Families, Youth and Community Care.

The removal of the responsibility for juvenile detention centres from the Queensland Corrective Services Commission relates to the pre election commitment to integrate the administration of juvenile detention centres with other juvenile justice functions, including the management of children sentenced to community based court orders. The transfer will also ensure that the administration of the juvenile justice system will be completely removed from the operations of the adult correctional system.

Estimated Cost for Government Implementation

The move should be cost neutral as the current capital works budget for the 1998/99-2001/02 and the contracted juvenile services budget for 1998/99 will be transferred to the Department of Families, Youth and Community Care.

Consultation

Departments and Government agencies affected by the proposed legislation have been consulted, together with the relevant trade unions of the affected staff. The Policy Coordination Division of the Department of Premier and Cabinet has also been consulted. The Departments and Government agencies affected by the proposed legislation have agreed with the proposed amendments.

PART 1—PRELIMINARY**Short title**

Clause 1. The short title of the Bill is the *Juvenile Justice Legislation Amendment Act 1998*.

Commencement

Clause 2. This provides that the provisions of the Bill will commence on a date to be proclaimed.

**PART 2—AMENDMENT OF *CORRECTIVE SERVICES*
(*ADMINISTRATION*) ACT 1988****Act amended in pt 2**

Clause 3 This provides for Part 2 of the Bill to amend the *Corrective*

Services (Administration) Act 1988.

Amendment of s 18 (Functions of Commission)

Clause 4 This clause deletes the responsibility for providing programs and services for detainees from the functions of the Commission.

Amendment of s 19 (Powers of Commission)

Clause 5 This clause deletes any reference to detainees or the *Juvenile Justice Act 1992* from the powers of the Commission.

Amendment of s 20 (Rules)

Clause 6 This clause deletes references to the Commission's responsibility to make rules for detention centres, detainees or the conduct of detention centre officers.

Amendment of s 23A (Definitions for div 2A)

Clause 7 This clause deletes references to juvenile justice operations and detainees from the powers which enable the Commission to contract with other bodies to provide operational services.

Amendment of s 23B (Engaging persons or bodies to conduct Commission's operations)

Clause 8 This clause deletes the restriction on the Commission to only engage a Government Owned Corporation (GOC) to provide juvenile detention centre services.

.Omission of s 23D (Directions for detention centres)

Clause 9 This clause deletes the provisions enabling the Commission to give directions to a GOC engaged to deliver detention centre services.

Amendment of s 23E (Commission retains custody and responsibilities)

Clause 10 This clause deletes the reference to detention centres from the clause which specifies that the Commission retains custody of offenders. It also removes a reference to s.23D which is deleted by this Bill.

Amendment of s 30 (Custody of seal; authentication of documents)

Clause 11 This clause deletes a reference to the *Juvenile Justice Act 1992* from the provisions relating to the authentication of Commission documentation.

Amendment of s 32 (Disclosure of interest)

Clause 12 This clause removes the references to detainees from the provisions relating to the disclosure of pecuniary and contractual interests.

Amendment of s 43 (Discipline)

Clause 13 This clause removes the reference to the rules and standards of the *Juvenile Justice Act 1992* from the grounds on which an employee of the Commission could be disciplined, if such rules were contravened.

Amendment of s 45 (Suspension)

Clause 14 This clause removes a reference to a detention centre from the provisions that allow suspension of an officer for the security and good order of a prison.

Replacement of s 51 (Funds to be maintained)

Clause 15 This clause rewords the provisions relating to the maintenance and management of prisoners' trust funds to remove all reference to detainees.

Amendment of s 63 (Commission deemed to be owner of property)

Clause 16 This clause removes all references to detention centres and property appropriated for the use of detainees, as property deemed to be property of the Commission.

Amendment of s 70 (Annual report)

Clause 17 This clause removes the reference to the *Juvenile Justice Act 1992* as an Act for which the Commission has the responsibility for the preparation of an annual report concerning its operations and administration.

Amendment of s 71 (Regulation-making power)

Clause 18 This clause removes a reference to a penalty that can be imposed under s.23D. Section 23D has been removed by this Bill and is no longer applicable.

Insertion of new pt 6, div 4

Clause 19 This clause inserts two transitional provisions. The first clarifies the status of authentication of documents relating to the functions of the Queensland Corrective Services Commission prior to proclamation. The second confirms that for proceedings for offences against property that occurred whilst the Commission had administrative control of detention centres, the Commission continues to be deemed the owner of the property.

Amendment of schedule (Dictionary)

Clause 20 The dictionary is amended to remove the definitions of “detainee”, “detention centre” and “detention centre officer”. All references to detention centres and programs for detainees are removed from the definition of “custodial corrections”.

**PART 3—AMENDMENT OF *JUVENILE JUSTICE ACT*
1992****Act amended in pt 3**

Clause 21 This provides for Part 3 to amend the *Juvenile Justice Act 1992*.

Amendment of s 5 (Definitions)

Clause 22 The definition section is amended to remove the terms “detainee” and “officer”, which are terms that are no longer generally used in the Act. Where the terms are used, specific definitions will occur in the relevant sections. The term “detention centre” is inserted into the definition section as this term is now used regularly.

Omission of pt 1A (Administration)

Clause 23 Part 1A dealt specifically with the administration of the juvenile justice system by different agencies and departments. As the responsibility for the juvenile justice system is now to be administered by one Department, the Part is superfluous and is to be removed.

Amendment of s 10 (Application by police officer for permission to take child’s identifying particulars)

Clause 24 This clause removes an obligation on police to give a notice of application for identifying particulars to the Commission, if the child is a detainee.

Amendment of s 41 (Custody of child pending court appearance)

Clause 25 This clause nominates the Chief Executive as the person who has custody of a child pending a court appearance, rather than the Commission.

Amendment of s 43 (Custody of child if not released by court)

Clause 26 This clause nominates the Chief Executive as the person who has custody of a child remanded in custody and allows the Chief Executive to determine where the child is to be held, rather than the Commission.

Amendment of s 48 (Application of Mental Health Act 1974, pt 4)

Clause 27 This clause ensures that the terms used in the Mental Health Act are translated to the appropriate equivalent terms used in the *Juvenile Justice Act 1992*.

Amendment of s 60 (Chief executive's and commission's rights of audience generally)

Clause 28 This clause removes any reference to the Commission having a right of appearance in a court in matters relating to a child being dealt with under the Act.

Amendment of s 89 (Application for review)

Clause 29 This clause removes any reference to the Commission having the right to institute a sentence review in the Childrens Court of Queensland.

Amendment of s 94 (Interrelation with other types of appeal)

Clause 30 This clause removes any reference to the Commission from the provisions explaining sentence review procedures in relation to other avenues of appeal.

Amendment of s 98 (Correction of error by court making order)

Clause 31 This clause removes any reference to the Commission from the provisions allowing application to the court to correct errors.

Amendment of s 98A (Court may reopen sentencing proceedings)

Clause 32 This clause removes any reference to the Commission from the provisions applying s.188, (sentencing proceedings may be reopened) of the *Penalties and Sentences Act 1992*.

Amendment of s 101 (Lack of jurisdiction discovered after proceeding ends)

Clause 33 This clause removes any reference to the Commission from the provisions allowing application to the court upon discovery of a lack of competent jurisdiction.

Amendment of s 102 (Extension of Act for detainee offender)

Clause 34 This clause replaces the Commission with the Chief Executive as the person who may recommend the continued treatment of a detainee as a child.

Insertion of new s 107C (Commission to be notified if offender sentenced as an adult)

Clause 35 A new clause is inserted to deal with the instances where the responsibility for the administration of a court order may shift from the Department of Families, Youth and Community Care to the Commission. In these circumstances an obligation is imposed on the Chief Executive, who will be present at the court proceedings, to immediately notify the Commission which no longer has a right of appearance, of such an order.

Amendment of s 119 (Copy of court order to be given to child, parent etc.)

Clause 36 This clause removes any reference to the Commission from the provisions obliging a court to deliver a written copy of its order to certain parties.

Amendment of s 167 (Detention to be served in detention centre)

Clause 37 This clause replaces the Commission with the Chief Executive as the person responsible for determining where a child sentenced to a period of detention is to be detained.

.Amendment of s 172A (Application for variation of detention order in interests of justice)

Clause 38 This clause replaces the Commission with the Chief Executive as the person able to make an application in the best interests of a child to have a detention order varied.

Amendment of s 173 (Multiple orders of detention and imprisonment against person as adult and child)

Clause 39 This section is reworded to clarify that the Chief Executive may arrange with the Commission for a child to serve a period of

imprisonment in a detention centre under certain circumstances.

Amendment of s 191 (Cancellation of release order)

Clause 40 This section is intended to clarify that the term “Commissioner” used in the section refers to the Commissioner of the Police Service.

Amendment of s 198 (Show cause hearing)

Clause 41 This clause replaces the Commission with the Chief Executive in the provision that clarifies, that where the Chief Executive has day to day care of a child, the Chief Executive cannot be ordered to pay compensation for the damage caused by a child.

Amendment of s 203 (Management of detention centres)

Clause 42 Section 203 relates to responsibility for the security and management of detention centres. The clause replaces the Commission with the Chief Executive as the person responsible for general management responsibilities.

Amendment of s 204 (Official visitors appointment)

Clause 43 Section 204 relates to appointment of official visitors and provides restrictions on those who can be appointed as official visitors. The clause amends the section to ensure that those who are public service employees, members of the Queensland Police Service, employed by the Commission, or other persons, or the employees of other persons contracted by the Commission, are ineligible for appointment as official visitors.

Amendment of s 205 (Functions, powers and duties of official visitor)

Clause 44 This clause replaces the Commission with the Chief Executive as the person who is responsible for the arrangements relating to the functions and operation of official visitors.

Amendment of s 206 (Directions to official visitor on security)

Clause 45 This clause replaces the Commission with the Chief Executive as the person responsible for giving directions to an official visitor on matters of security.

Amendment of s 207 (Where children to be detained)

Clause 46 This clause replaces the Commission with the Chief Executive as the person who determines in which detention centre a child is to be detained or remanded in custody.

Amendment of s 208 (Authority for admission to detention centre)

Clause 47 This clause replaces the Commission with the Chief Executive as the person responsible for the admission procedures of a child to a detention centre.

Amendment of s 210 (Leave of absence)

Clause 48 This clause replaces the Commission with the Chief Executive as the person responsible for granting leave of absence from a detention centre to a child.

Amendment of s 211 (Childrens Court may order transfer to prison)

Clause 49 This clause replaces the Commission with the Chief Executive as the person who may apply to a Childrens Court Judge for an order transferring a person detained in a detention centre from the detention centre to a prison. The clause also includes an obligation on the Chief Executive to immediately notify the Commission if the order is made.

Amendment of s 212 (Commission may authorise treatment)

Clause 50 This clause replaces the Commission with the Chief Executive as the person who may authorise medical treatment for a child in their custody in certain circumstances.

Amendment of s 213 (Ordinary visitor)

Clause 51 This clause replaces the Commission with the Chief Executive as the person responsible for the approval of visitors to detention centres.

Amendment of s 215 (Complaints generally)

Clause 52 This clause replaces the Commission with the Chief Executive as the person responsible for dealing with the procedures relating to complaints in detention centres.

Amendment of s 216 (Official visitor to hear and investigate complaints)

Clause 53 This clause replaces the Commission with the Chief Executive as the person to whom reports regarding investigations by an official visitor are to be directed.

Amendment of s 220 (Search warrant)

Clause 54 This clause replaces the Commission with the Chief Executive as a person able to apply to a Magistrate for a warrant regarding escapees.

Amendment of s 221 (Warrants may be granted by telephone, facsimile, radio etc.)

Clause 55 This clause replaces the Commission with the Chief Executive as a person who may apply for a warrant via telephone or facsimile in certain circumstances. The clause also replaces the term “police officer” with the term “applicant” to ensure that there is consistency in terminology in the section.

Amendment of s 222 (Offences relating to detention centres)

Clause 56 This clause replaces the Commission with the Chief Executive as the person responsible for giving directions relating to security of detention centres.

Amendment of s 223 (Child of detainee may be accommodated in detention centre)

Clause 57 This clause replaces the Commission with the Chief Executive as the person allowing a child of a person detained in a detention centre to be accommodated in the centre.

Insertion of new pt 6, div 6

Clause 58 This clause inserts trust account provisions relating to monies held in trust for detainees. The new part clarifies the obligations of the Chief Executive in the collection, maintenance and distribution of funds held in trust for detainees.

Amendment of s 224A (Programs and services for children)

Clause 59 This clause omits any reference to the Commission and its functions in developing programs and services for children detained in detention centres.

Amendment of s 224B (Police may help in keeping child in custody)

Clause 60 This clause replaces the Commission with the Chief Executive as the person able to enter into arrangements with the Queensland Police Service to assist in holding a child in custody.

Amendment of s 225 (Parent entitled to know of whereabouts of child in custody)

Clause 61 This clause replaces the Commission with the Chief Executive as the person with responsibility for notification of the whereabouts of a child held in custody.

Amendment of s 226 (Preservation of confidentiality)

Clause 62 This clause modifies the confidentiality clause to remove the *Corrective Services Act 1988* and the *Corrective Services (Administration) Act 1988* as prescribed Acts under which confidential information can be disclosed for the purposes of that Act.

Replacement of s 227 (Approved form)

Clause 63 This clause removes any reference to the Commission as a body which may approve forms under the Act.

Amendment of s 228 (Evidence)

Clause 64 This clause removes any reference to the Commission as a body that has its authority recognised under the Act by virtue of this section.

Amendment of s 229 (Proceeding for offence)

Clause 65 This clause removes any reference to the Commission as an authority that may appear for the purposes of prosecuting an offence under the Act.

Insertion of new ss 232A and 232B

Clause 66 This clause inserts the appropriate powers of delegation under the Act. The powers were previously found under Part 1A—Administration, which is being deleted by this Bill.

Insertion of new pt 8 hdg

Clause 67 This clause inserts a new heading for Part 8 and divides the Part to assist in clarifying the transitional provisions in the Act.

Insertion of new pt 8, div 2

Clause 68 This clause provides for the transitional provisions relating to the enactment of this Bill. The first provision details the transfer of officers and employees of Queensland Corrections to the public service. It establishes the employment status and preserves the entitlements, of those staff to be transferred.

The second provision ensures that the standing of the Chief Executive is established to take disciplinary action against an employee for any breaches of conduct committed prior to proclamation.

The third provision transfers monies held in trust for detainees by the Commission to the trust fund of the Chief Executive.

The fourth provision terminates the existing contacts between the Commission and Queensland Corrections for the delivery of detention centre services.