

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

REMAND CENTRES (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

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**GARY HUMPHRIES MLA
ATTORNEY-GENERAL**

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Outline

The *Remand Centres (Amendment) Bill 1997* (the Bill) amends the *Remand Centres Act 1976* (the Act) in relation to matters that arise from the *Prisoners' Interstate Leave Bill 1997*. In addition, some other amendments dealing with administrative issues have been made.

The Act provides for the establishment and management of remand centres in the ACT. The *Prisoners' Interstate Leave Bill 1997* is part of a national scheme, which provides for prisoners to travel to another jurisdiction for short term compassionate reasons, whilst remaining in the lawful custody of their 'home' jurisdiction.

Amendments to the Act contained in the Bill that arise from the *Prisoners' Interstate Leave Bill 1997* relate to

- 1 the categories of people who may be detained in a remand centre,
- 2 the transfer of custody from the Superintendent of a remand centre to an escort or escorts assigned in relation to a leave of absence permit,
- 3 the inclusion of matters relating to issuing of interstate leave permits and the granting of temporary release within the ACT as issues about which detainees may complain to the Official Visitor, and
- 4 changing the decision maker in relation to temporary release within the ACT from the Minister to the Administrator (the public servant responsible for the administration of remand centres under the Act)

Other amendments to the Act proposed in the Bill are

- 1 providing that the Administrator may delegate his or her powers - except for the power to transfer people remanded into the Administrator's custody from a remand centre or other institution within the ACT to another remand centre or institution outside the ACT - to a person who holds an office specified in the regulations, and
- 2 amending penalty provisions for offences, so that monetary penalties are expressed in terms of penalty units rather than dollars, and to bring the penalties into line with those for other ACT offences

Financial Impact Statement

The amendments proposed in the Bill have no financial impact

Details of the Bill are as follows:

Clause 1 provides for citation of the Bill once enacted

Clause 2 provides for the commencement of the Bill. Staged commencement is proposed, with formal clauses commencing on the day on which the Act is notified in the Gazette. In addition, clause 5 will also commence on that day. The remaining parts of the Bill once enacted will commence on a day or days fixed by the Minister by notice in the Gazette, or after six months from when the Act is notified in the Gazette. This will provide time for the development of administrative arrangements with other jurisdictions which have interstate leave of absence legislation.

The commencement of clause 5 as soon as possible is to enable a regulation to be made for the delegation of the Administrator's powers. The reasons for commencing clause 5 on that day are outlined below.

Clause 3 establishes that references to the 'Principal Act' in the Bill are references to the *Remand Centres Act 1976*.

Clause 4 provides for the delegation of powers of the Administrator (except for the power to transfer detainees outside the ACT under section 7 of the Act), subject to conditions prescribed by the regulations.

The potential difficulty created by the lack of a delegation power is, that, if the Administrator is unavailable, it may not be possible to make decisions quickly, which may have adverse consequences for detainees. Powers and responsibilities of the Administrator which currently cannot be delegated include the power to issue standing orders and instructions, to respond to recommendations by the medical officer, and to receive recommendations by the Official Visitor. In addition, the *Prisoners' Interstate Leave Bill 1997* and this Bill propose additional powers for the Administrator in relation to granting interstate leave, and temporary release within the ACT. It is vital that such powers can be exercised at any given time. The conditions likely to be prescribed by the regulations are that the exercise of delegated powers can only occur in the absence of the Administrator, and if a decision is required urgently.

The proposal at clause 4 is for the Administrator to be able to delegate his or her powers (as specified in the clause) to a person who holds a position within the same administrative unit of the ACT Government Service as the Administrator. This means, that as the powers of the Administrator are currently exercised by the Director of Corrective Services, they may be delegated to a person who also holds a particular office within Corrective Services. The office will be specified in the regulations, and it is likely that some powers will not be delegated to the office of the Superintendent, but rather to another senior officer within the Service. The wording of the clause permits that one or more powers only may be delegated, and that different powers may be delegated to persons occupying different offices within the same administrative unit of the ACT Government Service as the Administrator.

Clause 5 amends section 15 of the Act by adding two categories of persons who may be detained in a remand centre. These new categories, and the length of time they may be detained in a remand centre are:

- persons who are in the ACT pursuant to a leave permit issued by a jurisdiction which has been recognised by the ACT as having corresponding legislation under the *Prisoners' Interstate Leave Bill 1997* once enacted. This category of persons may be held overnight in a remand centre whilst on a permit;
- persons who entered the ACT pursuant to a leave permit issued by another jurisdiction with corresponding legislation, and who, under clause 16 of the *Prisoners' Interstate Leave Bill 1997*, have been ordered by the Magistrate to be detained in custody pending being returned to the jurisdiction where the permit was issued. (Clause 16 of the *Prisoners' Interstate Leave Bill 1997* relates to the escape or attempted escape whilst in the ACT of prisoners on interstate leave permits issued by participating jurisdictions.) Persons in this category may be kept at a remand centre until being handed to an appropriate interstate escort or for 7 days.

Clauses 6, 7 and 12 change the penalty provisions for offences under the Act or against the regulations. The opportunity to change these provisions has been taken, to bring them into line with current practice in the ACT. The expression of financial penalties has been changed to penalty units rather than dollars, and in some cases, the penalties have been changed, to better reflect the gravity of the offence. For example, under the Bill, the offence of escape has been awarded a penalty of imprisonment for 5 years, an increase from the current maximum of 1 year's imprisonment, whereas it is proposed to reduce the penalty for imprisonment of 1 year to 6 months for the offence of disobey a lawful order.

Clause 8 amends section 21 of the Act, which relates to the withdrawal of entitlements by the Superintendent. At present, one or more of detainees' entitlements (which are specified at section 20 of the Act, and include such things as wearing their own clothing, performing work in the remand centre and participating in recreational activities) may be withdrawn where the Superintendent believes it is necessary to do so to maintain security, discipline or order in a remand centre, or for the health of a detainee. In addition to the withdrawal of entitlements specified at section 20 of the Act, section 21 allows the Superintendent to confine the detainee to his or her sleeping quarters. Section 21 also provides that detainees must have 2 hours recreation in the open air each day.

Subclause 8 (a) of the Bill provides that the Superintendent may cause a detainee to be deprived of 1 or more of his or her entitlements where the Superintendent believes on reasonable grounds that the detainee has disobeyed a direction under subclause 13 (1) of the *Prisoners' Interstate Leave Bill 1997* once enacted. Subclause 13 (1) of the *Prisoners' Interstate Leave Bill 1997* provides that an assigned escort may give a prisoner on an interstate leave permit such directions as are reasonable to ensure compliance with the permit and its conditions. Whilst subclause 13 (2) of the *Prisoners' Interstate Leave Bill 1997* creates an offence of failing to comply with reasonable directions, with a penalty of 50 penalty units or 6 months imprisonment or both, the availability of an administrative mechanism for punishing failure to comply with a reasonable direction in addition is considered desirable, to provide for an alternative, less drastic, means of enforcement of compliance with directions.

For example, a detainee (referred to as a 'prisoner' under the *Prisoners' Interstate Leave Bill 1997*) may be granted an interstate leave permit in order to visit to a person with whom he or she has had a longstanding personal relationship if that person is in acute personal need. A condition of the permit may be that the prisoner may spend two lots of three hours with the person. An assigned escort may make a direction at the expiration of 3 hours that the visit be terminated. The prisoner may refuse to comply with this direction. Depending on the circumstances, it may be most appropriate to

- do nothing (by way of punishment) in response to the prisoner's refusal to obey a reasonable direction, or
- for the Superintendent to impose an administrative penalty on the prisoner upon his or her return to a remand centre, by, for example, limiting the amount of recreation he or she is allowed for a set period, or
- charge the prisoner under subclause 13 (2) of the *Prisoners' Interstate Leave Bill 1997*, or
- do both of the last two dot points above

The inclusion of the amendments to section 21 of the Act proposed in subclause 8 (a) of the Bill provides for maximum flexibility in responding to different circumstances

Subclause 8 (b) ensures that the deprivation of one or more entitlements proposed by subclause 8 (a) does not interfere with a detainee's right to have two hours recreation in the open air on each day

Clause 9 amends section 25 of the Act by adding four grounds to those currently provided for, in relation to which a detainee or person acting on a detainee's behalf may make a complaint to the Official Visitor

Three of the new grounds relate to the granting of permits pursuant to the *Prisoners Interstate Leave Bill 1997* once enacted. These are at the proposed section 25 (1) (d), (e) and (f) of the Act. They cover refusal to grant a leave of absence permit, conditions or restrictions of a permit, and variations or revocations of permits or their conditions or restrictions.

The fourth new ground (at proposed section 25 (1) (c) of the Act) makes explicit that a detainee or a person acting on his or her behalf may complain to the Official Visitor in relation to a refusal to temporarily release a detainee (within the ACT) under section 28 of the Act

Clause 10 provides that the Superintendent shall release detainees granted a permit under the *Prisoners' Interstate Leave Bill 1997* once enacted, from his or her custody into that of the escort or escorts assigned in relation to the permit. This simply provides a mechanism for the transfer of legal custody.

Clause 11 changes the decision-maker from the Minister to the Administrator in relation to the granting of temporary release of detainees within the ACT. Given that the Administrator is the decision-maker in relation to the granting of permits for interstate leave of absence under the *Prisoners' Interstate Leave Bill 1997*, it is appropriate that he or she also be the decision-maker in relation to leave within the ACT. This clause also makes explicit that temporary release under section 28 of the Act relates to release within the ACT only. It also provides that persons detained in a remand centre as a result of clause 6 of this Bill (ie those on interstate leave permits, or who have been remanded in custody as a result of allegedly escaping or attempting to escape whilst in the ACT on an interstate leave permit) may not be granted temporary release within the ACT under section 28 of the Act