

**1998**

**LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**CUSTODIAL ESCORTS (CONSEQUENTIAL PROVISIONS) BILL 1998**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
Gary Humphries MLA  
Minister for Justice and Community Safety**

# **Custodial Escorts (Consequential Provisions) Bill 1998**

## **Explanatory Memorandum**

### **Outline**

The Custodial Escorts (Consequential Provisions) Bill 1998 (the Bill) amends a number of Acts to ensure that persons appointed as escorts pursuant to the provisions of the Custodial Escorts Bill 1998, once enacted as the *Custodial Escorts Act 1998*, will be able to perform escort functions for the purposes of the amended Acts.

For example, the amendment to the *Coroners Act 1997* made by **clause 12** of the Bill will enable a person who has been arrested pursuant to section 45 of that Act to be brought before the Coroner by a person appointed as an escort under the Custodial Escorts Bill 1998.

The Bill also makes amendments to the *Firearms Act 1996* to facilitate the carriage of firearms by persons appointed as escorts, for the purpose of carrying out that function.

### **Financial implications**

The cost of providing escort services for the purposes of the amended Acts will be met from within existing resources.

## Details of Bill

### Clauses 1 and 2 - Short title and commencement

**Clauses 1 and 2** are formal clauses dealing with the title of the Bill, once enacted, and the commencement arrangements. The substantive provisions of the Bill will commence on a day, or days, fixed by the Minister by notice in the *Gazette*.

## PART II - AMENDMENT OF CHILDREN'S SERVICES ACT

**Clause 3** makes clear that the Act being amended by Part II of the Bill is the *Children's Services Act 1986*.

**Clause 4** amends the meaning of the term "police officer" in section 29 of Division 2, Part IV, of the *Children's Services Act* to make it clear that the term does not include a "custodial escort". Paragraph 4 (b) amends section 29 to include a definition of the term "custodial escort" to mean an escort under the *Custodial Escorts Act 1998*, other than an escort who is a police officer.

**Clauses 5, 6, 7, 8, 9 and 10** amend sections 39, 62A, 62C, 65, 69G and 69GA of the *Children's Services Act*, respectively. The provisions deal with children who have been arrested or committed by a court to an institution and the movement of young offenders between those institutions and/or a court.

Presently, officers appointed by the Director of Family Services and police officers are able to perform escort functions in respect of children under these provisions. The amendments will enable a person appointed as an escort pursuant to the *Custodial Escorts Act 1998* to perform those same functions.

## PART III - AMENDMENT OF CORONERS ACT

**Clause 11** makes clear that the Act being amended by Part III of the Bill is the

**Clause 12** amends section 45 of the Coroners Act which enables the Coroner to issue a warrant for the arrest of a person who has failed to attend when summonsed to appear before the Coroner

Presently, a police officer who executes the warrant must bring the arrested person before the Coroner, as soon as possible after the arrest. The amendment will enable the function of bringing an arrested person before the Coroner to be carried out, on behalf of the police, by an escort appointed pursuant to the *Custodial Escorts Act 1998*.

#### **PART IV - AMENDMENT OF CRIMES ACT**

**Clause 13** makes clear that the Act being amended by Part IV of the Bill is the *Crimes Act 1900*.

**Clauses 14 and 15** amend sections 349X and 349Y of the Crimes Act which, respectively, apply where a police officer arrests a person.

- without a warrant for the arrest of the person in his or her possession at the time of the arrest, or
- where the police officer reasonably believes the person to be unlawfully at large.

In both cases the sections require the police officer to take the arrested person before a Magistrate

The amendments will enable the function of taking an arrested person before a Magistrate to be carried out, on behalf of the police, by an escort appointed pursuant to the *Custodial Escorts Act 1998*.

## PART V - AMENDMENT OF FIREARMS ACT

**Clause 16** makes clear that the Act being amended by Part V of the Bill is the *Firearms Act 1996*. The amendments made to this Act are to facilitate the carriage of firearms by escorts appointed pursuant to the *Custodial Escorts Act 1998*. Such escorts will be required to comply with the provisions of the Firearms Act

**Clause 17** amends section 21 of the Firearms Act which deals with general restrictions on the issue of licences under the Act. In particular, paragraph 21(3)(d) prevents the Registrar of Firearms from issuing a licence to a person unless the Registrar is satisfied that the person is a resident, or about to become a resident, of the ACT

This prevents persons who reside in NSW, for example in Queanbeyan, but who work in the ACT in a job which requires the person to be licenced to carry a firearm, from obtaining a licence. This is not only an impediment to persons who are appointed as escorts being able to obtain a licence. It is equally a problem for persons employed in the private security industry who reside in NSW.

To overcome this the amendment enables the Registrar to issue a licence to a person who is not a resident, or about to become a resident, of the ACT, if the Registrar is satisfied that it is necessary for the person to possess or use a firearm for the purpose of his or her business or employment in the ACT and the person otherwise meets the criteria for obtaining a licence.

**Clause 18** amends section 82 of the Firearms Act. Section 82 of that Act makes it an offence for a person to carry or use a firearm, in or on premises:

- in a manner likely to:
  - ⇒ injure, or endanger the safety of, another person,
  - ⇒ cause reasonable fear for the infliction of injury; or

⇒ destroy or damage property, or

- with disregard for his or her safety or the safety of others.

The legitimate use of weapons by escorts appointed pursuant to the *Custodial Escorts Act 1998* may involve the use of firearms in premises in a way which could injure or endanger the safety of another person (such as an escaping prisoner) or otherwise be seen to contravene this provision

The amendment makes clear that the provision is subject to an exception, where a 'reasonable excuse' for the particular use or carriage of the firearms exists. This is consistent with the drafting of the offences in sections 80 and 81 of the Firearms Act, both of which include the 'reasonable excuse' exception.

#### **PART VI - AMENDMENT OF GAMES WAGERS AND BETTING-HOUSES ACT**

**Clause 19** makes clear that the Act being amended by Part VI of the Bill is the *Games Wagers and Betting-Houses Act 1901*.

**Clauses 20** and **21** amend sections 4 and 15 of the Games Wagers and Betting-Houses Act which enable a Magistrate to issue a warrant authorising a police officer to arrest a person and bring the person before the Magistrate.

The amendments will enable the function of bringing an arrested person before the Magistrate to be carried out, on behalf of the police, by an escort appointed pursuant to the *Custodial Escorts Act 1998*.

**Clause 22** makes a consequential amendment to the special warrant form in the Second Schedule to the Games Wagers and Betting-Houses Act.

## PART VII - AMENDMENT OF JUDICIAL COMMISSIONS ACT

**Clause 23** makes clear that the Act being amended by Part VII of the Bill is the *Judicial Commissions Act 1994*.

**Clause 24** amends section 44 of the Judicial Commissions Act which enables the presiding member of a Commission to issue a warrant for the arrest of a person who has failed to attend when summonsed to appear before the Commission.

Proposed **new subsection 44(6)** will enable the function of bringing an arrested person before a Commission to be carried out, on behalf of the police, by an escort appointed pursuant to the *Custodial Escorts Act 1998*

## PART VIII - AMENDMENT OF MAGISTRATES COURT ACT

**Clause 25** makes clear that the Act being amended by Part VIII of the Bill is the *Magistrates Court Act 1930*.

**Clause 26** amends section 5 of the Magistrates Court Act by inserting a definition of the term 'escort'

**Clause 27** amends section 47 of the Magistrates Court Act which provides that a warrant directed to all police officers shall order them to apprehend the person named in the warrant and bring him or her before the Court.

The amendment will enable the function of bringing an arrested person before the Court to be carried out, on behalf of the police, by an escort appointed pursuant to the *Custodial Escorts Act 1998*

**Clause 28** amends section 70 of the Magistrates Court Act which enables the Court to remand a defendant into the custody of the Administrator appointed under the *Remand Centres Act 1976*.

Proposed new **subsections 70(3) and (4)** are intended to ensure that a direction by the Court for a defendant to be conveyed into the custody of the Administrator can be carried out by any police officer or any escort appointed pursuant to the *Custodial Escorts Act 1998*

**Clause 29** amends section 152 of the Magistrates Court Act which requires that the police officer to whom a warrant of commitment is directed to take the person named in the warrant to the prison mentioned in the warrant

The amendment to paragraph 152(1)(a) and proposed new **subsection 152(1A)** are intended to ensure that the Court can direct such a warrant to police officers or escorts and, where this occurs, the warrant can be executed by any police officer or any escort appointed pursuant to the *Custodial Escorts Act 1998*.

A number of consequential changes are made to forms in the First Schedule to the Magistrates Court Act by **clause 30**.

#### **PART IX - AMENDMENT OF PRISONERS' INTERSTATE LEAVE ACT**

**Clause 31** makes clear that the Act being amended by Part IX of the Bill is the *Prisoners' Interstate Leave Act 1997*. That Act enables persons detained in a remand centre to leave the centre, under escort, for compassionate purposes, such as obtaining medical treatment or attending the funeral of a relative

**Clauses 32 and 33** are to the effect that the escort functions under the Prisoners' Interstate Leave Act will be performed by escorts appointed pursuant to the *Custodial Escorts Act 1998*.

The amendment effected by **clause 34** brings the provision dealing with use of force under the the Prisoners' Interstate Leave Act into line with the corresponding provision in **clause 9** of the *Custodial Escorts Bill 1998*.



**Clause 35** amends section 16 of the Prisoners' Interstate Leave Act which requires a police officer who apprehends an escaped interstate prisoner, or into whose custody such a prisoner is delivered by someone else, to take the prisoner before a Magistrate

The amendment will enable the function of taking such a person before a Magistrate to be carried out, on behalf of the police, by an escort appointed pursuant to the *Custodial Escorts Act 1998*

#### **PART X - AMENDMENT OF PRISONERS (INTERSTATE TRANSFER) ACT**

**Clause 36** makes clear that the Act being amended by Part X of the Bill is the *Prisoners (Interstate Transfer) Act 1993*. That Act enables convicted prisoners to be transferred interstate on welfare grounds or to face trial

**Clause 37** amends section 3 of the Prisoners (Interstate Transfer) Act to the effect that the escort functions under that Act will be performed by escorts appointed pursuant to the *Custodial Escorts Act 1998*

#### **PART XI - AMENDMENT OF REMAND CENTRES ACT**

**Clause 38** makes clear that the Act being amended by Part XI of the Bill is the *Remand Centres Act 1976*. That Act enables the establishment and operation of a remand centre in the ACT for the detention of persons pending court proceedings or awaiting transfer to serve a sentence.

The amendment effected by **clause 39** brings the provision dealing with use of force under the the Remand Centres Act into line with the corresponding provision in **clause 9** of the Custodial Escorts Bill 1998.

## PART XII - AMENDMENT OF REMOVAL OF PRISONERS ACT

**Clause 40** makes clear that the Act being amended by Part XII of the Bill is the *Removal of Prisoners Act 1968*. That Act provides for the authority for the removal of convicted persons from the ACT to serve a term of imprisonment in New South Wales

**Paragraph 41(a)** updates references to officers of the Magistrates Court

**Paragraph 41(b)** amends section 3 of the Act to include an escort appointed pursuant to the *Custodial Escorts Act 1998* within the definition of 'constable'. This will enable such escorts, pursuant to a warrant, to convey a person from the Territory to the prison specified in the warrant

## PART XIII - AMENDMENT OF ROYAL COMMISSIONS ACT

**Clause 42** makes clear that the Act being amended by Part XII of the Bill is the *Royal Commissions Act 1991*.

**Clause 43** amends section 35 of the Royal Commissions Act which enables the Chairperson, or a Commissioner authorised by the Chairperson, of a Commission to issue a warrant for the arrest of a person who has failed to attend when summonsed to appear before the Commission.

Proposed **new subsection 35(6)** will enable the function of bringing an arrested person before a Commission to be carried out, on behalf of the police, by an escort appointed pursuant to the *Custodial Escorts Act 1998*.