

1995

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

**REMAND CENTRES (AMENDMENT) BILL 1995**

**EXPLANATORY MEMORANDUM**

Circulated by authority of

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Attorney-General

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OUTLINE

**General outline**

The purpose of the Bill is to amend the *Remand Centres Act 1976* so as to extend the categories of people who may be detained in a remand centre rather than in police custody or in a prison in New South Wales. In particular, it allows for the detention of those mentally ill persons who have been sentenced to imprisonment or other detention in custody prior to their transfer to New South Wales, in order that appropriate arrangements may be made for their care and control.

**Financial impact**

Nil

## NOTES ON CLAUSES

### **Clause 1 - Short title**

This clause is a formal clause to provide for the short title of the Act.

### **Clause 2 - Commencement**

This clause provides for commencement of the Act by notification in the Gazette or within six months.

### **Clause 3 - Principal Act**

This clause cites the *Remand Centres Act 1976* as the Principal Act.

### **Clause 4 - Persons who may be detained**

This clause extends the categories of convicted prisoners and other persons who may be held at a remand centre rather than in police custody or in prison in New South Wales. It also updates a number of provisions in line with other legislative changes.

Subclause 4(a) removes a reference to section 202 of the *Magistrates Court Act 1930* which dealt with recognizances to keep the peace and be of good behaviour. Section 202 was repealed and a different section substituted in 1991. Subclause 4(b) inserts a reference to subsection 547(2) of the *Crimes Act 1900*, which allows a magistrate, where he or she requires a person to enter a recognizance to be of good behaviour for offensive or defamatory words, to be detained for a period of three months or until he or she agrees to enter the recognizance. Since the powers of a magistrate in such a case are preventative rather than flowing from conviction for a criminal offence, it is appropriate that such persons be detained in a remand centre with other unconvicted persons rather than in a prison.

**Unauthorised immigrants** Subclause 4(c) updates the references to categories of unauthorised immigrants who may be detained at a remand centre. Subclause 4(f) removes obsolete definitions under Commonwealth immigration legislation.

**Mentally ill persons** Subclause 4(d) adds certain categories of convicted prisoners to the list of those persons who may be detained. Paragraph (k) allows for mentally ill persons to be detained in the remand centre pending collection of relevant psychiatric and medical reports and the making of suitable arrangements for removal to and reception by the New South Wales prison system. Such persons may be either mentally ill offenders who have been convicted and sentenced to a term of imprisonment or others who have been acquitted on the grounds of mental illness or found

unfit to plead on the grounds of mental illness and have been ordered to be detained by virtue of Part XIA of the *Crimes Act 1900*

**Other** Paragraph (l) of subclause 4(d) allows persons who have been sentenced to imprisonment but who have lodged an appeal against conviction to be detained pending the hearing of their appeal Paragraph (m) of subclause 4(d) provides for prisoners to be detained where removal to New South Wales is delayed for any reason, for example, the lack of police escort. Paragraph (n) of subclause 4(d) allows for detention of a prisoner who is serving a term of imprisonment in any other State or Territory and who is brought back to the ACT to stand trial for ACT offences. It is appropriate that such prisoners be held in a purpose-built facility rather than in police cells as is currently the case

Subclause 4(e) is a formal change only.

#### **Clause 5 - Further amendments**

This clause provides for amendments to the Act to remove gender-specific language, as set out in the Schedule.

#### **Clause 6 - Amendment of the *Removal of Prisoners Act 1968***

Clause 6 amends the *Removal of Prisoners Act 1968* which currently provides that a prisoner who is returned to the ACT is to remain in the custody of the escorting constable Because of the amendments outlined above, detention in a remand centre or in the custody of another constable will suffice.