



New South Wales

Children (Detention Centres) Amendment Regulation 1999

under the

Children (Detention Centres) Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children (Detention Centres) Act 1987*.

CARMEL TEBBUTT, M.L.C.,
Minister for Juvenile Justice

Explanatory note

The object of this Regulation is to amend the *Children (Detention Centres) Regulation 1995* so as:

- (a) to provide that a notice in a detention centre setting out the general routine of the centre is to be in plain English, as well as in other languages determined by the Director-General, and be readily understood, and
- (b) to enable a registered nurse to make certain decisions and recommendations regarding the provision of medical and dental treatment to a detainee, and
- (c) to confirm that the Director-General is to take all reasonable steps to provide education to detainees under the age of 15 years, and to provide education and vocational training to detainees 15 years or older if they so request, and
- (d) to enable the Director-General to provide certain programs in detention centres for detainees, such as education programs and recreational programs, and
- (e) to enable a detainee to correspond with his or her juvenile justice officer and certain other persons by telephone, and

1999 No 598

Children (Detention Centres) Amendment Regulation 1999

Explanatory note

- (f) to provide a framework for the making of complaints by any person regarding the administration or management of a detention centre and by a detainee or his or her representative regarding the treatment of the detainee, including the procedure for making and dealing with complaints and the keeping of complaints registers, and
- (g) to clarify the circumstances in which an officer may use force against any person in a detention centre, and
- (h) to make minor amendments by way of statute law revision.

This Regulation is made under the *Children (Detention Centres) Act 1987*, including section 45 (the general power to make regulations).

Children (Detention Centres) Amendment Regulation 1999

1 Name of Regulation

This Regulation is the *Children (Detention Centres) Amendment Regulation 1999*.

2 Commencement

This Regulation commences on 10 November 1999*.

3 Amendment of Children (Detention Centres) Regulation 1995

The *Children (Detention Centres) Regulation 1995* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

* The regulation (statutory rule) appointed 10 November 1999 as the date of its commencement. Pursuant to section 39 (2A) of the Interpretation Act 1987, the regulation is not invalid merely because the regulation was published in the Gazette after the day on which one or more of its provisions is or are expressed to take effect, but provides, in that case, for that or those provisions to take effect from the day on which it is published in the Gazette, instead of from the earlier day.

Schedule 1 Amendments

(Clause 3)

[1] The whole Regulation (except clauses 30 and 56)

Omit “superintendent”, “superintendent’s” and “superintendents” wherever occurring.

Insert instead “centre manager”, “centre manager’s” and “centre managers”, respectively.

[2] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

centre manager of a detention centre means the person for the time being in charge of the centre.

complaints guidelines means guidelines prepared by the Director-General under clause 31J.

force includes threat of the use of force and use of instruments of restraint.

instruments of restraint includes handcuffs and riot shields and such other articles as are declared to be instruments of restraint by an order in force under subclause (3).

[3] Clause 3 (3)

Insert after clause 3 (2):

- (3) The Director-General may, by order published in the Gazette, declare any articles, or classes of articles, to be instruments of restraint for the purposes of this Regulation.

[4] Clause 4 General routines

Omit clause 4 (3). Insert instead:

- (3) The centre manager of a detention centre is to ensure that a notice setting out the general routine for the centre:
 - (a) is written in English, and in such other languages as are determined by the Director-General in relation to the centre, and

- (b) is written in a style that, for persons speaking the language in which it is written, is easy to read and understand, and
- (c) is exhibited in a conspicuous position where it may be read by persons who are in the detention centre or part of the detention centre to which it relates.

(3A) The languages (other than English) in which such a notice is to be written are to be determined with regard to the languages spoken in the communities from whom the centre receives, or is likely to receive, detainees.

[5] Clause 5 Admission of detainees

Omit clause 5 (2) (d). Insert instead:

- (d) the procedures for seeking information and for making complaints in accordance with the complaints guidelines,

[6] Clause 7 Health and medical attention

Omit “medical officer or a dental officer” from clause 7 (1).

Insert instead “medical officer, dental officer or registered nurse”.

[7] Clause 7 (3)

Insert “or registered nurse” after “medical officer”.

[8] Clause 7 (3) and (4)

Omit “medical officer’s” wherever occurring.

[9] Clause 7 (5)

Insert “or a registered nurse” after “medical officer”.

[10] Clause 15

Omit the clause. Insert instead:

15 Education and training

- (1) The Director-General must take all reasonable steps to ensure that each detainee under 15 years of age is provided with education at a level appropriate to the detainee's aptitude and potential, and must do so whether or not the detainee so requests.
- (2) The Director-General must take all reasonable steps to ensure that each detainee of or above the age of 15 years is provided with education or vocational training, or both, at a level appropriate to the detainee's aptitude, potential and interests, but only if the detainee so requests.
- (3) In the exercise of a function under this clause, the Director-General must give special attention to the needs of detainees who are illiterate or who have a disability.

[11] Clause 15A

Insert after clause 15:

15A Access to programs

- (1) The Director-General may provide the following programs in detention centres:
 - (a) vocational and education programs,
 - (b) psychological and social programs,
 - (c) recreational programs,
 - (d) alcohol and other drugs programs,
 - (e) culture-specific programs.
- (2) The centre manager of a detention centre is to ensure that an incentive scheme is established and implemented in the centre that will encourage detainees to participate in any programs so provided.
- (3) In the exercise of a function under this clause, the Director-General must give special attention to the needs of detainees who have a disability.

[12] Clause 28 Correspondence with external bodies

Insert in clause 28 (1) in alphabetical order:

Commonwealth Ombudsman means the Commonwealth Ombudsman appointed under the *Ombudsman Act 1976* of the Commonwealth.

[13] Clause 28A

Insert after clause 28:

28A Telephone communications

- (1) A detainee may request the centre manager of a detention centre (either directly or through a staff member) to be allowed telephone contact with:
 - (a) his or her juvenile justice officer, or
 - (b) any person or body referred to in clause 28 (3) (a)–(l).
- (2) A staff member who receives such a request:
 - (a) if he or she has the authority to do so, must facilitate such telephone contact as soon as practicable after receiving the request, or
 - (b) in any other case, must immediately refer the request to the centre manager.
- (3) The centre manager must ensure that procedures are in place that facilitate telephone contact in accordance with this clause on the day the request is made or as soon as practicable after that day.

[14] Part 3, Division 3, heading

Omit the heading. Insert instead:

Division 3 Communications with staff members

[15] Clause 30 Requests to speak to centre manager or other staff member

Omit “superintendent” wherever occurring.

Insert instead “centre manager or other staff member”.

[16] Clause 31

Omit the clause.

[17] Part 3A

Insert after Part 3:

Part 3A Complaints

31 Definitions

In this Part:

complainant means a person who makes a complaint under this Part.

complaints register means a complaints register referred to in clause 31H.

officer of the Department does not include the centre manager or any other staff member of a detention centre.

referee, in relation to a complaint, means the person by whom the complaint is dealt with.

representative of a detainee, means:

- (a) a family member, carer or significant other of the detainee, or
- (b) an Official Visitor for the detention centre, or
- (c) the New South Wales Ombudsman, or
- (d) a support person, or
- (e) a legal practitioner, or
- (f) a chaplain.

support person for a detainee, means:

- (a) a person who is authorised to visit the detainee under Division 1 of Part 3, or
- (b) another detainee at the detention centre, or
- (c) a staff member of the detention centre,

being a person who the detainee wishes to have as a support person, and who agrees to be the detainee's support person.

31A Who may make a complaint

- (1) A complaint concerning the administration or management of a detention centre may be made by any person.
- (2) A complaint concerning the treatment of a particular detainee may be made by the detainee or by a representative of the detainee.

31B How complaints may be made

- (1) A complaint may be addressed, either verbally or in writing, to a prescribed person.
- (2) A written complaint addressed to a prescribed person may be lodged with that person or with any other prescribed person.
- (3) A written complaint addressed to a prescribed person and lodged with another prescribed person is to be immediately referred to the person to whom the complaint is addressed.
- (4) If a detainee requests a prescribed person to do so, the prescribed person must ensure that all reasonable steps are taken to provide assistance to the detainee in making a complaint under this Part, including, where necessary, the provision of an interpreter.
- (5) Except in such circumstances as may be provided by the complaints guidelines, an envelope purporting to contain a complaint must not be opened or its contents inspected or read by anyone other than the person to whom it is addressed.
- (6) For the purposes of this clause, a complaint addressed to the Manager Juvenile Placements/Transport Unit is to be treated as a complaint addressed to the centre manager of a detention centre.
- (7) In this clause, **prescribed person** means:
 - (a) the centre manager or any other staff member of a detention centre, and
 - (b) the Director-General or any other officer of the Department.

31C Who may deal with complaints

- (1) A complaint is to be dealt with by the person to whom it is made or addressed or by such other person as the complaints guidelines may permit or require.
- (2) The complaints guidelines may permit or require specified classes of complaints to be dealt with by specified persons, or specified classes of persons, instead of by the persons to whom they are addressed.
- (3) If a person to whom a complaint is addressed refers the complaint to some other person in accordance with the complaints guidelines, the person to whom the complaint was addressed must inform the complainant of that fact.

31D How complaints to be dealt with

- (1) The referee for a complaint may conduct a hearing into the matters raised by the complaint.
- (2) For the purposes of any such hearing, the referee:
 - (a) may invite any person to make representations in relation to the complaint, and
 - (b) if the complaint makes allegations against any other person, must invite the complainant and that other person to make representations in support of, or in reply to, the allegations.
- (3) A person who is invited to make representations may decline to do so.
- (4) Subject to this Part, the procedures for dealing with a complaint are to be as set out in the complaints guidelines.

31E Representation of complainants

- (1) This clause applies if a complainant is invited to make representations in relation to a complaint.
- (2) The complainant may be accompanied by a support person when making any representations.
- (3) If a complainant wishes to nominate a support person but is unable to do so, the referee must nominate a person who, in the referee's opinion, is appropriate to act as a support person for the detainee.

- (4) The detainee may decline to be accompanied by a support person nominated under subclause (3).
- (5) The Director-General is to ensure that all reasonable steps are taken to provide an interpreter when the detainee makes representations in either or both of the following circumstances:
 - (a) the detainee has difficulty communicating because of an intellectual or physical disability or impairment,
 - (b) the detainee has difficulty communicating in English.

31F Complainant to be notified of certain matters

- (1) As soon as practicable after receiving a complaint, the referee must notify the complainant:
 - (a) of the fact that the referee is dealing with the complaint, and
 - (b) of the means by which the referee may be contacted in relation to the complaint, and
 - (c) of the procedure to be followed by the referee in dealing with the complaint (including whether the complainant will be invited to appear before the referee to make representations in connection with the complaint), and
 - (d) when the complainant can expect a decision on the complaint.
- (2) As soon as practicable after making a decision on a complaint, the referee must notify the complainant:
 - (a) of the decision that has been made, and
 - (b) of the action (if any) that the complainant can expect to occur as a consequence of the decision.
- (3) As far as is practicable, all such information is to be communicated in such a way so as to be readily understood by the complainant.
- (4) The complaints guidelines may specify classes of complaint (being complaints of a trivial nature) in respect of which notice under this clause need not be given or may be given verbally.

31G Review of decision on complaint

- (1) A complainant who is not satisfied with the decision on the complaint may apply to the referee's supervisor or to the Director-General for a review of that decision.
- (2) An application for a review is to be dealt with in accordance with the complaints guidelines.
- (3) An application for a review of the decision on a complaint must not be dealt with by the person who dealt with the complaint or by any person who is subordinate to the person who dealt with the complaint.

31H Complaints registers

- (1) A complaints register is to be kept:
 - (a) by the Director-General (in relation to complaints made to the Director-General or to officers of the Department), and
 - (b) by the centre manager of each detention centre (in relation to complaints made to the centre manager or to staff members of the centre), and
 - (c) by the Manager Juvenile Placements/Transport Unit (in relation to complaints made to that person).
- (2) The complaints registers kept under this clause are to be available for inspection by the New South Wales Ombudsman.
- (3) The complaints register kept by the centre manager of a detention centre is also to be available for inspection by the Official Visitor for the centre to which the register relates.

31I Information to be recorded in complaints register

- (1) The following information is to be recorded in the relevant complaints register in respect of each complaint:
 - (a) the date on which the complaint was made, and
 - (b) the identity of the complainant, and
 - (c) the substance of the complaint, and
 - (d) the identity of the referee for the complaint, and
 - (e) brief particulars of the procedures followed by the referee in dealing with the complaint, and

- (f) the decision that was made on the complaint, and
- (g) the date on which the complainant was informed of the referee's decision on the complaint, and
- (h) if the complaint was not disposed of within 21 days after it was made, the reason why it was not disposed of within that time, and
- (i) such other information in relation to the complaint as the complaints guidelines require to be recorded in the register.

(2) The complaints guidelines may specify classes of complaint (being complaints of a trivial nature) in respect of which the requirements of subclause (1) need not be complied with.

31J Complaints guidelines

- (1) The Director-General may issue guidelines as to how complaints, and applications for the review of decisions on complaints, are to be dealt with.
- (2) Copies of the complaints guidelines are to be available for inspection by detainees and visitors at each detention centre as well as at offices of the Department.

[18] Clause 36 Orders generally

Omit clause 36 (1).

[19] Clause 36 (4)

Insert at the end of clause 36:

- (4) An officer is not to engage in behaviour toward a detainee:
 - (a) that is intimidating, humiliating, demeaning, threatening or oppressive, or
 - (b) that otherwise constitutes an abuse of the officer's authority.

1999 No 598

Children (Detention Centres) Amendment Regulation 1999

Schedule 1 Amendments

[20] Clause 37

Omit the clause. Insert instead:

37 Use of force

- (1) An officer must not use force against any person in a detention centre except for the following purposes:
 - (a) to prevent a detainee from injuring himself or herself,
 - (b) to protect the officer or other persons from attack or harm,
 - (c) to prevent a detainee from inflicting serious damage to property,
 - (d) to prevent a detainee from escaping,
 - (e) to prevent a person from entering a detention centre by force,
 - (f) to search a detainee in circumstances in which the detainee refuses to submit to being searched,
 - (g) to seize any dangerous or harmful article or substance that is in the possession of a detainee,
 - (h) to prevent or quell a riot or other disturbance.
- (2) An officer may also use force in order to move a detainee who refuses to move from one location to another in accordance with an order of that officer, but only if the officer first gives a warning to the detainee of the consequences of failing to comply with the order.
- (3) In dealing with a detainee, an officer must use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the detainee is to be avoided if at all possible.

[21] Clause 56 Delegation of centre manager's functions

Omit “superintendent”, “superintendent’s” and “deputy superintendent”.

Insert instead “centre manager”, “centre manager’s” and “coordinator-operations” respectively.

BY AUTHORITY