

**CHILDREN (DETENTION CENTRES) AMENDMENT ACT
1988 No. 40**

NEW SOUTH WALES



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CHILDREN (DETENTION CENTRES) AMENDMENT ACT 1988
No. 40

NEW SOUTH WALES



Act No. 40, 1988

An Act to amend the Children (Detention Centres) Act 1987 to make further provision with respect to the detention of children and other young persons; and to make consequential amendments to the Children (Criminal Proceedings) Act 1987. [Assented to 9 August 1988]

*Children (Detention Centres) Amendment 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Children (Detention Centres) Amendment Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Children (Detention Centres) Act 1987 No. 57

3. The Children (Detention Centres) Act 1987 is amended as set out in Schedule 1.

Consequential amendment of Children (Criminal Proceedings) Act 1987 No. 55

4. The Children (Criminal Proceedings) Act 1987 is amended—

- (a) by omitting sections 9A and 33A;
- (b) by omitting from section 33 (4) the words “but subject to section 33A,”;
- (c) by inserting after section 33 (4) the following subsection:
 - (4A) Subsection (4) is subject to section 28B of the Children (Detention Centres) Act 1987 but is not subject to any other provision of that Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**)—

(a) Section 3 (1), definition of “detainee”—

Omit “23 or”.

(b) Section 3 (1), definition of “misbehaviour”—

Omit “the offence committed by the detainee in absconding from lawful custody”, insert instead “an offence under section 37A (breaching conditions of leave, failure to return etc.)”.

(2) Section 9 (**Persons on remand and persons subject to control to be detained in detention centres**)—

Section 9 (5)—

Omit “sections 9A, 33A and”, insert instead “sections 28A and 28B of this Act and section”.

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 17A—

After section 17, insert:

Detainees not to be supplied with or allowed alcohol, tobacco, adult films etc.

17A. (1) The superintendent of a detention centre shall not supply a detainee with, or authorise the supply to a detainee of, alcohol or tobacco in any form.

(2) The superintendent shall not allow in a detention centre any film (including a video tape) if it is classified as an “R” film, or has been refused a classification, under the Film and Video Tape Classification Act 1984.

(3) Nothing in this section affects the operation of section 14 (a) (arrangements for the well-being of detainees).

(4) Section 18 (**Work to be performed by detainees**)—

Section 18 (1)—

Omit the subsection, insert instead:

(1) The superintendent of a detention centre may require a detainee to carry out any work or activity that—

- (a) is reasonable having regard to the detainee’s age and physical and intellectual capacity; and
- (b) is not hazardous to the detainee’s health or safety; and
- (c) avoids any conflict with the detainee’s religious beliefs or educational or other training programmes; and
- (d) meets the requirements of section 4 and section 14 (a) and (b).

(5) Section 19 (**Segregation of detainees for protection**)—

(a) Section 19 (1) (d)—

Omit “so far as is reasonably practicable”, insert instead “unless otherwise appropriate”.

(b) Section 19 (1) (e)—

Omit “can be seen by, and may see and speak to,”, insert instead “is visible to, and can readily communicate with,”

(6) Section 20 (**Complaints of misbehaviour**)—

Section 20 (9), (10)—

Omit the subsections.

(7) Section 21 (**Punishments for misbehaviour**)—

(a) Section 21 (1) (d)—

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SCHEDULE 1—AMENDMENTS—*continued*

After “3 hours”, insert “or, in the case of a detainee of or over the age of 16 years, not exceeding 12 hours”.

(b) Section 21 (2) (b)—

Omit “so far as is reasonably practicable”, insert instead “unless otherwise appropriate”.

(c) Section 21 (2) (c)—

Omit “able to be seen by, and to see and speak to,”, insert instead “visible to, and able to communicate readily with,”.

(d) Section 21 (3)—

Omit the subsection, insert instead:

(3) A punishment must not be imposed on a detainee so as to interfere with a visit to the detainee by—

(a) a barrister or solicitor (or such other classes of persons as may be prescribed); or

(b) any other person, unless the superintendent is of the opinion that the security, safety or good order of the detention centre would be adversely affected if the visit were permitted.

(8) Section 22 (**Prohibited punishments**)—

Section 22 (1) (e)—

After “calls”, insert “(except during any period of punishment by exclusion or confinement referred to in section 21 (1) (d))”.

(9) Sections 23, 23A—

Omit section 23, insert instead:

Persons on remand not to be granted leave

23. A person on remand may not be granted leave to be absent from a detention centre but may be permitted to be absent under section 23A.

Escorted absences

23A. (1) A detainee may be absent from a detention centre by order in writing of the Director-General—

(a) for the purpose of attending the funeral of a close relative; or

(b) for the purpose of visiting a close relative who is seriously ill; or

(c) for any other purpose that the Director-General thinks proper.

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(2) The superintendent of the detention centre shall direct an officer to take charge of the detainee while the detainee is so absent from the detention centre.

(3) While the detainee is so absent from a detention centre the detainee shall be regarded as being in lawful custody.

(10) Section 24 (**Persons subject to control may be granted leave, discharged etc.**)—

(a) Section 24 (1)—

Omit “The Director-General”, insert instead “Subject to the regulations, the Director-General”.

(b) Section 24 (1) (a)—

Omit the paragraph, insert instead:

- (a) grant a person subject to control leave to be absent from a detention centre for a purpose specified in subsection (1A);

(c) Section 24 (1A), (1B)—

After section 24 (1), insert:

(1A) The purposes for which leave may be granted under subsection (1) (a) are as follows:

- (a) attending the funeral of a close relative;
- (b) visiting a close relative who is seriously ill;
- (c) applying for employment or being interviewed in relation to an application for employment;
- (d) engaging in employment of a kind specified in the order;
- (e) applying for enrolment in a course of education or vocational training or being interviewed in relation to an application for enrolment in such a course;
- (f) attending a course of education or vocational training at a place specified in the order;
- (g) any other purpose that the Director-General thinks proper, being a purpose which the Director-General considers to be directly associated with the welfare or rehabilitation of the person concerned.

(1B) The regulations may make provision for or with respect to—

- (a) the circumstances in which an order may be made under this section; and
- (b) the conditions to be imposed on such an order; and

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(c) any other matter relevant to the making of such an order, including the purposes for which an order may be made.

(d) Section 24 (6), (7)—

Omit the subsections, insert instead:

(6) The Director-General may, by further order in writing, revoke an order under this section.

(11) Section 25 (**Removal to hospital of detainees**)—

Section 25 (5)—

Omit the subsection.

(12) Sections 28A–28F—

After section 28, insert:

Certain children may be remanded in prison

28A. (1) This section applies to a child of or above the age of 16 years who is—

- (a) a child (including a detainee) charged with an indictable offence; or
- (b) a detainee subject to a detention order relating to an indictable offence and is charged with a detention centre offence (as defined in section 28C) or an indictable offence.

(2) In any criminal proceedings against a child to whom this section applies a court may remand the child to a prison pending the commencement of the hearing of the proceedings or during any adjournment of the hearing, but only if—

- (a) the person by whom the proceedings were commenced or the Director-General applies for such a remand; and
- (b) the child is not released on bail under the Bail Act 1978; and
- (c) the court is of the opinion that the child is not a suitable person for detention in a detention centre.

(3) The Children's Court may at any time on the application of the Director-General remand a child as referred to in subsection (2), subject to the requirements of paragraphs (b) and (c) of that subsection.

(4) Section 28E makes provision for the matters to be taken into account in deciding whether a person is suitable for detention in a detention centre.

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28B. (1) This section applies to a person of or above the age of 16 years who—

- (a) is subject to a detention order relating to an indictable offence; and
- (b) is subject to a further detention order (being an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987) in relation to a detention centre offence (as defined in section 28C) committed while the person was a detainee in relation to the offence referred to in paragraph (a).

(2) The Children's Court may order that a person to whom this section applies be committed to prison for the whole or any part of the period specified in that further detention order, but only if—

- (a) an application for the order is made by the Director-General or the person who commenced the proceedings which resulted in the making of that further detention order; and
- (b) the Children's Court is of the opinion that the person is not a suitable person for detention in a detention centre.

(3) Section 28E makes provision for the matters to be taken into account in deciding whether a person is suitable for detention in a detention centre.

(4) On the coming into operation under section 28F of an order under this section, the detention order concerned becomes a sentence of imprisonment for a term equivalent to the period specified in the order of the Children's Court under this section.

Meaning of "detention centre offence"

28C. In sections 28A and 28B, a detention centre offence is—

- (a) an offence under section 33 (escaping or attempting to escape from lawful custody); or
- (b) an offence under section 37A (failing to comply with condition of leave or failing to return after leave expires or after medical treatment); or
- (c) any other offence (except misbehaviour) committed within a detention centre.

Review etc. of s. 28B orders

28D. (1) An order under section 28B must be reviewed at least once a month by the Minister administering the Prisons Act 1952.

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(2) An application for the variation or revocation of an order under section 28B may be made to the Children's Court by or on behalf of—

- (a) the person to whom the order relates; or
- (b) the Minister administering the Prisons Act 1952.

(3) An application under subsection (2) (b) may be made only if the Minister administering this Act consents.

(4) In any proceedings on an application under this section, the person to whom the order relates is entitled—

- (a) to appear in the proceedings and be heard; and
- (b) to be represented by a barrister or solicitor or, by leave of the Children's Court, by an agent.

Consideration of suitability for detention centre

28E. (1) In considering (for the purposes of section 28A, 28B or 28D) whether a person is suitable for detention in a detention centre, a court must take into account the following:

- (a) the nature of any offence which the person has committed or is charged with having committed;
- (b) the likelihood of danger to the community should the person escape from a detention centre;
- (c) the likelihood of danger to staff or detainees if the person is detained at the detention centre concerned;
- (d) whether any previous behaviour of the person indicates that he or she is likely to create a serious management problem in a detention centre;
- (e) whether suitable accommodation is available for the person in prison.

(2) This section is not intended to prevent a court from taking into account other matters in considering the matter.

Consent of Minister administering Prisons Act 1952 required

28F. (1) The remand of a child to prison under section 28A, or an order under section 28B for the committal of a person to prison, has no operation unless and until the Minister administering the Prisons Act 1952 consents to it operating.

(2) Until the remand or order operates it shall be taken to be a remand to a detention centre or remains a detention order, as appropriate.

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- (13) Section 32 (**Termination of detention orders**)—
 Section 32 (b) (ii)—
 Omit “under section 38”.
- (14) Part 4, heading—
 Omit the heading, insert instead:
PART 4—OFFENCES
- (15) Section 33 (**Escaping**)—
 Section 33 (2)–(4)—
 Omit the subsections.
- (16) Section 34—
 Omit the section, insert instead:
Helping person to escape
 34. A person who helps a detainee in escaping or attempting to escape from lawful custody is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.
- (17) Section 37A–37D—
 After section 37, insert:
Breaching conditions of leave, failure to return etc.
 37A. (1) A detainee who—
 (a) is granted leave of absence by order under section 24 and fails, without reasonable excuse, to comply with any condition to which the order is subject or to return to the detention centre before the leave of absence expires; or
 (b) fails, without reasonable excuse, to return to the detention centre pursuant to the requirements of section 25 (4) (relating to return from medical treatment),
 is guilty of an offence and liable to imprisonment for a period not exceeding 3 months.
 (2) This section does not prevent misbehaviour that is an offence against this section being dealt with as misbehaviour rather than as an offence.
Trafficking in alcohol, drugs or other things
 37B. A person who, without lawful authority—
 (a) brings or attempts to bring into a detention centre any alcohol, drug or other thing of any kind; or

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- (b) delivers or attempts to deliver to a detainee any alcohol, drugs or other thing of any kind,

is guilty of an offence and is liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

Unlawful entry into detention centre or communication with detainee

37C. A person who, without lawful authority—

- (a) enters or attempts to enter any detention centre; or
 (b) communicates or attempts to communicate with any detainee,

is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

Disclosure of information obtained in administration etc. of Act

37D. A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
 (b) in connection with the administration or execution of this Act; or
 (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
 (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
 (e) with other lawful excuse.

(18) Section 38 (Arrest of escapees etc.)—

- (a) Section 38 (1)—

Omit “or absconded”.

- (b) Section 38 (2)—

Omit the subsection, insert instead:

(2) The Director-General may make an order for the arrest of a person if satisfied that—

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- (a) an order under section 24 applicable to the person has been revoked or (in the case of an order granting leave of absence) the person failed to return to the detention centre before the leave of absence expired, and in either case the person is not at a detention centre; or
 - (b) the person failed to return to the detention centre pursuant to the requirements of section 25 (4) (relating to return from medical treatment), and the person is not at a detention centre.
- (19) Section 39 (**Expediting trials and appeals**)—
- (a) Section 39 (2) (c)—
Omit “senior member of the Children’s Court”, insert instead “Senior Children’s Magistrate”.
 - (b) Section 39 (3) (c)—
Omit the paragraph, insert instead:
 - (c) to the Senior Children’s Magistrate—any Children’s Magistrate or any authorised Magistrate under the Children’s Court Act 1987,
- (20) Section 46, Schedule 1—
After section 45, insert:
Savings and transitional provisions
46. Schedule 1 has effect.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 46)

*Children (Detention Centres) Amendment Act 1988***Remand or transfer to prison**

1. (1) The remand of a person to prison in force under section 9A of the Children (Criminal Proceedings) Act 1987 shall, on the repeal of that section, be taken to be a remand under section 28A of this Act.
- (2) An order that a person be committed to prison in force under section 33A of the Children (Criminal Proceedings) Act 1987 shall, on the repeal of that section, be taken to be an order under section 28B of this Act.
- (3) Section 28A applies to an application made under, but not determined before the repeal of, section 9A of the Children (Criminal Proceedings) Act, 1987.
- (4) Section 28B applies to an application made under, but not determined before the repeal of, section 33A of the Children (Criminal Proceedings) Act 1987.

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SCHEDULE 1—AMENDMENTS—*continued*

Orders for leave

2. An order in force under section 23 immediately before the substitution of that section by the Children (Detention Centres) Amendment Act 1988 has effect in accordance with its terms as if that section had not been substituted.
