

1995—No. 458

**CHILDREN (DETENTION CENTRES) ACT 1987—  
REGULATION**

(Children (Detention Centres) Regulation 1995)

NEW SOUTH WALES



*[Published in Gazette No. 105 of 1 September 1995]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Children (Detention Centres) Act 1987, has been pleased to make the Regulation set forth hereunder.

RONALD DAVID DYER, M.L.C.,  
Minister for Community Services.

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**PART 1—PRELIMINARY**

**Citation**

1. This Regulation may be cited as the Children (Detention Centres) Regulation 1995.

**Commencement**

2. This Regulation commences on 1 September 1995.

**Definitions**

3. (1) In this Regulation:

“**Aboriginal**” means a person who:

- (a) is a member of the Aboriginal race of Australia; and
- (b) identifies as an Aboriginal; and
- (c) is accepted by the Aboriginal community as an Aboriginal;

“**approved property**”, in relation to a detainee, means:

- (a) such of the detainee's property as has not been surrendered or sent away under section 17 of the Act; or

(b) such of the detainee's property as has been lawfully acquired by the detainee since the detainee was admitted into a detention centre;

**“contraband”** means any property the possession of which by a detainee is not permitted by or under this Regulation;

**“dental officer”**, in relation to a detention centre, means a registered dentist who is approved by the Director-General as a dental officer for the detention centre;

**“detention period”**, in relation to a person subject to control, means the period for which the person is required, under the detention order by virtue of which the person is a person subject to control, to be detained in a detention centre;

**“letter”** means any letter, card, telegram, document or other similar form of written communication, whether or not contained in a parcel, and includes an envelope containing any of those things;

**“medical officer”**, in relation to a detention centre, means a registered medical practitioner who is approved by the Director-General as a medical officer for the detention centre;

**“minister of religion”** means:

- (a) a minister of religion (within the meaning of the Marriage Act 1961 of the Commonwealth) who is appointed or authorised by the diocesan or other authority of a religious denomination to minister to members of that denomination; or
- (b) a person who is appointed or authorised by a minister of religion referred to in paragraph (a) to minister to members of that denomination;

**“parcel”** means any parcel, package or other similar article, and includes any parcel or package containing any book, newspaper, magazine or other similar printed material;

**“the Act”** means the Children (Detention Centres) Act 1987;

**“Torres Strait Islander”** means a person who:

- (a) is a member of the Torres Strait Island race; and
- (b) identifies as a Torres Strait Islander; and
- (c) is accepted by the Torres Strait Island community as a Torres Strait Islander.

**(2)** In this Regulation:

- (a) a reference to a barrister is a reference to a legal practitioner who holds a practising certificate as a barrister for New South Wales, and includes a reference to a barrister for any other State or Territory who has a right of audience in any court in New South Wales; and
- (b) a reference to a solicitor is a reference to a legal practitioner who holds a practising certificate as a solicitor for New South Wales, and includes a reference to a solicitor for any other State or Territory who has a right of audience in any court in New South Wales.

## **PART 2—ADMINISTRATION**

### **General routines**

**4. (1)** The general routine for each detention centre is to be as determined by the Director-General.

**(2)** The Director-General may determine different general routines for different parts of a detention centre.

**(3)** The superintendent must ensure that a notice setting out the general routine is exhibited in a conspicuous position where it may be read by persons in the detention centre or part of the detention centre to which it relates.

**(4)** The Director-General may require the general routine for a detention centre to be published in such other manner as the Director-General thinks fit.

### **Admission of detainees**

**5. (1)** A detainee must not be admitted into a detention centre otherwise than in accordance with the Act.

**(2)** As soon as practicable after a detainee has been admitted into a detention centre, the superintendent must ensure that the detainee is informed of the following:

- (a) the general routine for the detention centre;
- (b) the detainee's obligations as to behaviour and conduct;
- (c) the detainee's rights as to legal representation and as to appeal;
- (d) the procedures for seeking information and making complaints;

- (e) the normal days and hours for visiting;
- (f) any other matter about which it is necessary for the detainee to be informed so as to enable the detainee to understand the detainee's rights and obligations and to adapt to living in the centre.

(3) If practicable, a detainee must be informed of the matters referred to in subclause (2) by being given a document in which information relating to each of those matters is written.

(4) A detainee who is being admitted to a detention centre must, on being required to do so by the superintendent, produce for inspection all property in the detainee's possession.

(5) The superintendent may exercise the superintendent's functions under section 17 of the Act in respect of any property produced for inspection as referred to in subclause (4).

### **Classification of detainees**

6. For the purposes of section 16 (1) of the Act, the following classes of detainees are prescribed:

Class A: those detainees who, in the opinion of the Director-General, are potentially dangerous and who should therefore be detained within a secure physical barrier at all times.

Class B: all other detainees.

### **Health and medical attention**

7. (1) Each detainee must be supplied with such medical and dental treatment as, in the opinion of a medical officer or a dental officer, is necessary to promote and maintain the detainee's health and well-being.

(2) Each detainee must, as soon as practicable after being admitted to a detention centre, be subjected to an examination by a registered medical practitioner or registered nurse for the purpose of determining the detainee's state of health and the results of the examination must be recorded.

(3) If a medical officer recommends to the superintendent that the employment, diet, exercise or other treatment of a detainee should be varied or modified for reasons of health, the superintendent must carry the medical officer's recommendation into effect in so far as is reasonably practicable.

(4) If it is not reasonably practicable to carry the medical officer's recommendation or any part of it into effect, the superintendent must report that fact to the Director-General.

(5) The superintendent may isolate a detainee from other detainees if:

- (a) the detainee is suffering from an infectious medical condition; and
- (b) there is a risk of other detainees becoming infected with that condition; and
- (c) the condition is, in the opinion of a medical officer, sufficiently serious as to require the detainee's isolation.

#### **Maintenance of physical well-being of detainees**

8. (1) A detainee must be supplied with adequate and wholesome food.

(2) A detainee must be afforded reasonable opportunities to participate in healthy exercise and sporting, recreational and leisure activities.

#### **Segregation of detainees for protection**

9. For the purposes of section 19 (3) of the Act, the following particulars are prescribed in relation to a detainee who is segregated:

- (a) particulars of the detainee's name and age;
- (b) particulars of the dates and times that the segregation began and ended;
- (c) particulars describing the place where the detainee was kept segregated;
- (d) particulars of the means provided to enable the detainee to occupy himself or herself;
- (e) particulars of the reason for which the detainee was segregated;
- (f) particulars of any approval given by the Director-General under section 19 (1) (b) of the Act;
- (g) particulars of the name and official capacity of the person by whom the segregation was ordered.

#### **Property**

10. (1) The superintendent may refuse to allow a detainee to use or otherwise have possession of the detainee's approved property if, in the opinion of the superintendent, the possession of the property by the detainee is a risk to security, safety or good order.

(2) Any approved property in the possession of a detainee:

- (a) must be kept by the detainee in a tidy and orderly manner; and
- (b) must be used only in a manner approved by the superintendent.

(3) Any approved property of a detainee which, in the opinion of the superintendent, is kept or used in such a manner as to be a risk to security, safety or good order may be retained by the superintendent.

(4) Any medicine surrendered by a detainee at a detention centre may be dealt with as a medical officer directs.

(5) Religious books, recognised objects of religious devotion and similar items belonging to a detainee are taken to be approved property and to have been acquired with the permission of the superintendent.

(6) The property of a detainee transferred from one detention centre to another must be transferred from the custody of the superintendent of the former detention centre to the custody of the superintendent of the new detention centre, together with such inventories and records as may be directed by the Director-General.

### **Books, newspapers and other printed material**

**11. (1)** A detainee may acquire any books, newspapers, magazines or other printed material approved by the superintendent.

(2) Any book, newspaper, magazine or other printed material in the possession of a detainee which, in the opinion of the superintendent, is likely to adversely affect the security, safety or good order of the detention centre may be disposed of or otherwise dealt with by the superintendent in such manner as is reasonable in the circumstances, taking into account the nature of the material.

### **Unauthorised possession of property**

**12.** Any property found in the possession of a detainee at any time after the detainee has been admitted to the detention centre is forfeit to the Crown unless:

- (a) the property was issued to the person by the superintendent or is the detainee's approved property; or
- (b) the Director-General otherwise directs.

**Disposal of property**

**13. (1)** Any property of a detainee that is retained by the superintendent may be disposed of by the superintendent in accordance with a request made by the detainee.

**(2)** Any food or articles of clothing belonging to a detainee may be destroyed if the superintendent considers it necessary for the maintenance of hygiene.

**(3)** Before any property is destroyed, the superintendent must, if practicable, cause the detainee to be informed of its proposed destruction and of the reason for its destruction.

**Records to be kept concerning property**

**14.** A record must be kept by the Superintendent, in a manner approved by the Director-General, of any property of a detainee:

- (a) surrendered to, or taken and retained by, the superintendent; or
- (b) sent away by the superintendent; or
- (c) forfeited to the Crown; or
- (d) disposed of by the superintendent; or
- (e) destroyed by the superintendent; or
- (f) transferred by the superintendent to the custody of the superintendent of some other detention centre; or
- (g) allowed to be retained by the detainee; or
- (h) returned to the detainee on discharge.

**Education and training**

**15. (1)** Provision may be made by the Director-General for the education of detainees, including detainees who are of or above the age of 15 years (that is, the school leaving age).

**(2)** Provision may be made by the Director-General for the vocational training of detainees (which may include practical training supplemented by the study of the relevant theory) whether by correspondence or otherwise.

**(3)** The Director-General must, in the exercise of the Director-General's functions under this clause, give special attention to the education and vocational training of detainees who are illiterate.

**Religious observance**

**16. (1)** The superintendent must afford reasonable opportunity to a minister of religion:

- (a) to minister to such of the detainees of the minister's religious denomination as wish to receive the minister's ministrations; and
- (b) on Sundays or other recognised days of religious observance, and on such other days as the superintendent may permit:
  - (i) to conduct Divine services or such other rites, services or assemblies as pertain to the minister's religious denomination; or
  - (ii) to conduct combined services in association with ministers of religion of other denominations.

**(2)** A detainee, on admission into a detention centre, may state the detainee's religious denomination or may state that the detainee is of no religious denomination.

**(3)** A record must be kept at a detention centre of each detainee's religious denomination or of the fact that the detainee is of no religious denomination.

**(4)** The superintendent must, when requested to do so by a minister of religion, inform the minister of the names of all detainees of the minister's religious denomination at the detention centre.

**(5)** The superintendent must take all reasonable steps to facilitate the participation of detainees in the religious observances of their respective religious denominations, but not so as to offer or impose any inducement or sanction with respect to any such participation.

**(6)** A detainee may attend at the detention centre:

- (a) Divine services or such other rites, services, or assemblies as pertain to the detainee's religious denomination; and
- (b) services of other religious denominations; and
- (c) combined services held by ministers of religion of the detainee's religious denomination in association with ministers of religion of other denominations.

**PART 3—VISITS AND COMMUNICATIONS****Division 1—Visits****Visiting days and times**

**17.** The normal days and times for visiting for each detention centre are to be as determined by the Director-General.



**Visits by relatives and friends**

**18. (1)** A detainee may be visited by relatives and friends at least once immediately after admission and, with the permission of the superintendent, at such intervals after that as the Director-General may determine for the centre in which the detainee is detained.

**(2)** The superintendent:

- (a) must have regard to the wishes of any parent or guardian of a detainee who has not attained the age of 16 years in relation to the management of visits to the detainee; and
- (b) must, at all times, seek to encourage and facilitate visits to detainees by their relatives and friends.

**Visits by barristers, solicitors and solicitor's clerks**

**19. (1)** A detainee may be visited:

- (a) by the detainee's barrister or solicitor; or
- (b) by a solicitor's clerk authorised in writing by the detainee's solicitor,

to discuss or transact legal business (whether civil or criminal) in which the detainee has an interest.

**(2)** Visits to a detainee by a barrister, solicitor or solicitor's clerk for the purpose of discussing or transacting legal business must take place during the normal days and hours of visiting, but must not otherwise be restricted in duration or number.

**(3)** The superintendent may, if of the opinion that it is convenient and practicable to do so, permit a visit to a detainee by a barrister, solicitor or solicitor's clerk:

- (a) to take place outside the normal days and hours of visiting; or
- (b) to extend beyond the normal days and hours of visiting.

**(4)** For the purposes of section 21 (3) (a) of the Act, the following classes of persons are prescribed:

- (a) a solicitor's clerk authorised in writing by a detainee's solicitor;
- (b) a registered medical practitioner;
- (c) an Official Visitor to the detention centre appointed under section 8A of the Act;
- (d) a field officer referred to in clause 21;
- (e) a person conducting an inspection of the detention centre in accordance with section 8 of the Act.

**Visits by diplomatic or consular representatives**

**20. (1)** A detainee who is a national of a foreign country (being a country with diplomatic or consular representation in Australia or New South Wales) may be visited by a diplomatic or consular representative of the foreign country.

**(2)** A detainee who is a national of a foreign country (being a country without diplomatic or consular representation in Australia or New South Wales) or who is a refugee or stateless person may be visited:

- (a) by a diplomatic or consular representative of a foreign country that assumes responsibility for the detainee's interests; or
- (b) by a representative of a national or international organisation that has as an object the protection of the interests of any such person.

**Visits to Aborigines and Torres Strait Islanders**

**21.** A detainee who is an Aboriginal or Torres Strait Islander may be visited:

- (a) by a field officer appointed by the Aboriginal Legal Service; or
- (b) by a field officer of any other organisation that provides legal or other assistance to Australian Aborigines or Torres Strait Islanders and that is approved by the Director-General.

**Other visits**

**22. (1)** The superintendent may authorise visits, in addition to other visits authorised by this Division, in any case in which the superintendent considers it appropriate.

**(2)** Without limiting the generality of subclause (1), the superintendent may authorise additional visits to a detainee if a medical officer has reported to the superintendent that the detainee is ill.

**Procedure for visits**

**23. (1)** The superintendent may determine the procedure to be observed by detainees and visitors during visits.

**(2)** A detainee may not be visited by any person unless that person has made arrangements with the superintendent for that purpose.

**(3)** A visit to a detainee may, with the consent of the Director-General or the superintendent, take place outside the sight and hearing of an officer.

(4) A visit to a detainee by a police officer, in the course of the police officer's official duties, must take place within the sight and hearing of an officer.

(5) The Director-General may permit a person:

- (a) to visit a detention centre; and
- (b) to conduct research in the centre; and
- (c) to be afforded facilities to interview, talk to and examine any detainee (but only with the detainee's consent) outside the sight and hearing of an officer.

#### **Articles not to be conveyed between visitors and detainees**

**24. (1)** A visitor must not deliver to or receive from any detainee (whether on the visitor's own behalf or on behalf of any other person) any article of any kind whatever, except in accordance with this clause.

Maximum penalty: 5 penalty units.

(2) The superintendent, or an officer authorised by the superintendent for that purpose, may permit a visitor to deliver an article to a detainee or an officer at the detention centre for delivery to a detainee.

(3) A person who is:

- (a) a barrister, solicitor or solicitor's clerk referred to in clause 19; or
- (b) a diplomatic or consular representative, or a representative of a national or international organisation, referred to in clause 20; or
- (c) a field officer referred to in clause 21; or
- (d) an officer of the Crown authorised to visit a person,

may deliver to the detainee whom the person is authorised to visit any document or other thing that it is necessary to deliver for the purpose of the visit.

#### **Refusal and termination of visits**

**25. (1)** A detainee who is of or above the age of 16 years may refuse to receive a visitor.

(2) The superintendent may, despite any other provision of this Division, refuse to permit a visit if, in the opinion of the superintendent, the security, safety or good order of the detention centre, or the health or well-being of a detainee, is likely to be adversely affected if the visit were to be permitted.

(3) The superintendent may terminate a visit to a detainee and direct the visitor to leave the detention centre if, in the opinion of the superintendent:

- (a) the visitor or detainee has, during the visit, committed a breach of the Act, this Regulation, the general routine of the detention centre or the procedure for visits; or
- (b) the security, safety or good order of the detention centre, or the health or well-being of a detainee, is likely to be adversely affected if the visit were to continue.

(4) A visitor must not fail to comply with a direction given under subclause (3).

Maximum penalty: 5 penalty units.

(5) The superintendent must cause a record to be kept of:

- (a) each refusal of a visit and each termination of a visit; and
- (b) the reasons for the refusal or termination.

## **Division 2—Letters and parcels**

### **Written communication with detainees**

26. (1) Except as otherwise provided by this Division:

- (a) any letter or parcel sent to or by a detainee must not be opened, read or inspected otherwise than by the person to whom the letter or parcel is addressed; and
- (b) any letter sent to or by a detainee must not be censored.

(2) A detainee may send letters and parcels to, and receive letters and parcels from, persons who are not detainees.

### **Inspection of mail and parcels**

27. (1) A letter or parcel (other than a letter or parcel referred to in clause 28) for delivery to or dispatch from a detainee may be opened and inspected by the superintendent or an officer authorised by the superintendent to do so if, in the opinion of the superintendent, the security, safety or good order of the detention centre is likely to be adversely affected by the delivery or dispatch.

(2) The superintendent may take possession of any letter or parcel and its contents and may deal with them in accordance with any directions given specifically or generally by the Director-General if, following

opening and inspection, the letter or parcel is found to contain contraband or any item or matter that, in the opinion of the superintendent, is likely to adversely affect the security, safety or good order of the detention centre.

(3) If the superintendent takes possession of a letter or parcel or its contents, the superintendent must ensure that the detainee to whom the letter or parcel is addressed is given notice of that fact.

### **Certain correspondence privileged**

28. (1) In this clause:

**“privileged letter”**, in relation to a detainee, means a letter which has been addressed by the detainee to the New South Wales Ombudsman, the Commonwealth Ombudsman, the Judicial Commission, the National Crime Authority, the New South Wales Crime Commission, the Independent Commission Against Corruption, the Anti-Discrimination Board, the Equal Opportunity Tribunal, the Human Rights and Equal Opportunity Commission, the Privacy Committee, the Legal Aid Commission, the Legal Services Commissioner, a Member of Parliament, a barrister, a solicitor or a police officer.

(2) If a detainee delivers to an officer a privileged letter:

- (a) the officer must send the letter immediately to the person to whom it is addressed; and
- (b) the letter must not be opened, inspected or read by anyone except the person to whom it has been addressed or some person authorised by that person.

(3) Any letter addressed to a detainee by:

- (a) the New South Wales Ombudsman; or
- (b) the Commonwealth Ombudsman; or
- (c) the Judicial Commission; or
- (d) the National Crime Authority; or
- (e) the New South Wales Crime Commission; or
- (f) the Independent Commission Against Corruption; or
- (g) the Anti-Discrimination Board; or
- (h) the Equal Opportunity Tribunal; or
- (i) the Human Rights and Equal Opportunity Commission; or
- (j) the Privacy Committee; or

- (k) the Legal Aid Commission; or
- (l) the Legal Services Commissioner,

must not be opened, inspected or read by anyone except the detainee to whom it is addressed or some person authorised by that detainee.

(4) If a Member of Parliament or a barrister or solicitor sends to a detainee a letter in a sealed envelope accompanied by a letter addressed to the superintendent claiming privilege in respect of the letter in the sealed envelope, the sealed envelope and letter must not (except as provided by subclause (5)) be opened, inspected or read by anyone except the detainee or some person authorised by the detainee.

(5) If the superintendent is of the opinion that a sealed envelope referred to in subclause (4) may contain contraband or any item or matter that is likely to adversely affect the security, safety or good order of the detention centre, the superintendent may require the detainee to open the sealed envelope in the superintendent's presence.

(6) If a sealed envelope so opened is found to contain contraband or any item or matter that, in the opinion of the superintendent, is likely to adversely affect the security, safety or good order of the detention centre, the superintendent may take possession of the envelope and its contents and may deal with them in accordance with any directions given specifically or generally by the Director-General.

### **Communication with detainees and prisoners in other detention centres and prisons**

29. A detainee may:

- (a) communicate by letter with a detainee who is detained in another detention centre, but only with the authority of the superintendents of both centres; and
- (b) communicate by letter with a prisoner detained in a prison, but only with the authority of the governor of the prison and the superintendent of the detention centre.

## **Division 3—Requests and complaints**

### **Requests to speak to the superintendent**

30. (1) An officer who receives a request from a detainee (whether orally or in writing) for permission to speak to the superintendent must, as soon as practicable, convey the request to the superintendent.

(2) The Superintendent must give a detainee from whom the superintendent receives such a request an opportunity to speak to the superintendent on the day on which the request is conveyed or made to the superintendent or as soon as practicable after that day.

(3) When giving a detainee an opportunity to speak, the superintendent must consider what the detainee has to say and must inform the detainee of any action that the superintendent has taken or proposes to take or (if no such action is taken or proposed) of the fact that the superintendent does not propose to take any action.

### **Written complaints to the Director-General**

**31. (1)** A complaint from a detainee concerning the detainee's treatment in the detention centre or the administration or management of the centre must be placed in an envelope (which may be sealed), addressed to the Director-General and delivered to an officer.

(2) If a detainee delivers to an officer an envelope addressed to the Director-General:

- (a) the officer must send the envelope immediately to the Director-General; and
- (b) the envelope must not be opened, nor are its contents to be inspected or read, by anyone except the Director-General or some person authorised by the Director-General.

(3) The Director-General need not deal with a complaint concerning a matter that the Director-General considers is appropriate for the superintendent to deal with unless the detainee has previously made a request under clause 30 for permission to speak to the superintendent about the matter.

## **PART 4—LEAVE**

### **Definitions**

**32.** In this Part:

**“day leave”** means leave to be absent from a detention centre granted under section 24 of the Act, being leave that does not involve absence overnight;

**“overnight leave”** means leave to be absent from a detention centre granted under section 24 of the Act, being leave that involves absence overnight.

**Matters to be taken into account before leave granted**

**33.** In deciding whether or not to grant day leave or overnight leave to a person subject to control, the Director-General must have regard to the following matters:

- (a) whether the person would be likely to commit any offence if the person were to be granted leave;
- (b) whether the granting of leave would be likely to create a risk to public safety;
- (c) whether the person's conduct while detained in a detention centre indicates that the person would observe any conditions to which leave would be subject;
- (d) whether the person would be likely to interfere with, or attempt to interfere with, a witness in any proceedings;
- (e) any previous history of escape or absconding of the person from lawful custody;
- (f) the kind of supervision to which the person would be likely to be subject while on leave;
- (g) whether the granting of leave would be likely to bring the person into contact with any victim of the offence in relation to which the person is detained;
- (h) any other matter that is, in the opinion of the Director-General, relevant to the decision.

**Day leave**

**34.** Day leave must not be granted to a person subject to control unless:

- (a) in the case of a classified person detained in relation to a serious indictable offence (within the meaning of the Children (Criminal Proceedings) Act 1987)—at least one half of the person's detention period in relation to that offence has expired; or
- (b) in the case of a classified person detained in relation to any other indictable offence—at least one third of the person's detention period in relation to that offence has expired; or
- (c) in the case of
  - (i) a classified person detained in relation to any offence other than an indictable offence; or



- (ii) any other person subject to control detained in relation to any offence (whether indictable or otherwise),  
at least one quarter of the person's detention period in relation to that offence has expired.

### **Overnight leave**

**35.** Overnight leave must not be granted to a person subject to control unless:

- (a) in the case of a classified person detained in relation to an indictable offence (whether or not a serious indictable offence)—  
at least two thirds of the person's detention period in relation to that offence has expired; or
- (b) in the case of
  - (i) a classified person detained in relation to any offence other than an indictable offence; or
  - (ii) any other person subject to control detained in relation to any offence (whether indictable or otherwise),  
at least one half of the person's detention period in relation to that offence has expired.

## **PART 5—MAINTENANCE OF ORDER**

### **Order generally**

**36. (1)** Order must be maintained with firmness, but with no more restriction or force than is necessary for safe custody and well-ordered community life within the detention centre.

**(2)** Officers must seek to influence detainees through example and leadership and must seek to enlist their willing co-operation.

**(3)** At all times, the treatment of detainees must be such as to encourage their self-respect and sense of personal responsibility.

### **Use of force**

**37. (1)** In dealing with a detainee, an officer must use no more force than is reasonably necessary in the circumstances, and the inflicting of injury on a detainee is to be avoided if at all possible.

(2) An officer may have recourse to use force for the following purposes:

- (a) to maintain control;
- (b) to ensure the personal safety of officers and other persons;
- (c) to search, where necessary, a detainee or to take possession of a dangerous or harmful article;
- (d) to prevent the escape of a detainee;
- (e) to prevent any unauthorised attempt to enter a detention centre by force or to free a detainee;
- (f) to defend himself or herself if attacked or threatened with attack, if the officer cannot otherwise protect himself or herself from harm;
- (g) to protect other persons from attack or harm, if there are no other immediate or apparent means available for their protection;
- (h) to avoid an imminent attack on the officer or some other person;
- (i) to prevent a detainee from injuring himself or herself;
- (j) to ensure compliance with a proper order, or maintenance of discipline, if a detainee is failing to comply with a lawful requirement in a manner which cannot otherwise be adequately controlled;
- (k) to move a detainee who declines or refuses to move from one location to another in accordance with a lawful order;
- (l) to control a detainee who is acting in a defiant manner;
- (m) to avoid imminent violent or destructive behaviour by a detainee;
- (n) to restrain violence directed towards the officer or towards other persons by an uncontrollable or disturbed detainee;
- (o) to prevent or quell a riot or other disturbance;
- (p) for any other similar purpose or in any other similar circumstances.

### **Reports on use of force**

**38. (1)** As soon as practicable after force is used by an officer against a person, a report must be furnished to the superintendent by each officer involved in the use of force.

**(2)** The report:

- (a) must be in writing; and
- (b) must specify the name of each person who has been subjected to force and the name of each officer who was involved in the use of force; and

- (c) must specify the location where the use of force occurred; and
- (d) must describe the nature of the force used and the purpose for which, or the circumstances in which, force was used; and
- (e) must be signed by each officer involved in the use of force.

## **PART 6—MISBEHAVIOUR**

### **Division 1—Misbehaviour generally**

#### **Definitions**

39. (1) In this Part:

“**minor misbehaviour**” means any act or omission that constitutes a breach of any of the provisions of Part 1 of Schedule 1;

“**serious misbehaviour**” means any act or omission that constitutes an offence under section 37A of the Act or a breach of any of the provisions of Part 2 of Schedule 1.

(2) Serious misbehaviour within the meaning of this Part is declared to be serious misbehaviour for the purposes of section 21 (1) (e) of the Act.

#### **Misbehaviour**

40. A detainee must not:

- (a) breach any of the provisions of Schedule 1; or
- (b) encourage any other detainee to breach any of those provisions.

#### **Complaints of misbehaviour**

41. (1) A complaint that a detainee is guilty of misbehaviour may be made, orally or in writing, to the Superintendent.

(2) An oral complaint must be recorded in writing by the superintendent.

### **Division 2—Minor misbehaviour**

#### **Complaints of minor misbehaviour**

42. A complaint that a detainee is guilty of minor misbehaviour is to be heard and determined by the superintendent.

**Inquiry to be held**

**43. (1)** The superintendent must inquire into a complaint as soon as is reasonably practicable but, in any event, within 24 hours after the complaint is made.

**(2)** Before proceeding to inquire into a complaint, the superintendent must inform the detainee of the name of the complainant and of the substance of the complaint.

**Adjournments**

**44.** The superintendent may adjourn an inquiry for any reason that seems to the superintendent to be sufficient.

**Procedure after guilty plea**

**45.** The superintendent may punish a detainee in accordance with section 21 of the Act if the detainee admits his or her guilt and the superintendent is satisfied that the detainee is guilty of the misbehaviour charged in the complaint.

**Procedure after not guilty plea**

**46. (1)** If the detainee denies his or her guilt, the detainee must be given an opportunity to cross-examine the complainant and any witnesses called by the complainant.

**(2)** If the detainee gives evidence at the inquiry, the superintendent and the complainant may cross-examine the detainee and any other person who gives evidence on the detainee's behalf.

**(3)** If the detainee, or any other person who is to give evidence on the detainee's behalf, cannot speak English to an extent that is sufficient for the purposes of the inquiry, the superintendent must adjourn the inquiry until the services of an interpreter can be obtained.

**(4)** At the conclusion of evidence, both the complainant and the detainee must (in that order) be given an opportunity to address the superintendent.

**Procedure generally**

**47. (1)** An inquiry must be conducted with as little formality and technicality, and with as much expedition, as fairness to the detainee, the requirements of the Act and this Regulation and the proper consideration of the complaint permit.

(2) Neither the complainant nor the detainee are entitled to be represented by a barrister or solicitor or by any other person.

(3) If the detainee refuses or fails to attend the inquiry, the superintendent may hear and determine the complaint in the detainee's absence.

(4) Evidence must not be required to be given on oath at the inquiry.

(5) The superintendent may allow such persons to be present and to give evidence at the inquiry as the superintendent thinks fit.

(6) A detainee may be dealt with for misbehaviour even though the misbehaviour constitutes an offence.

(7) Punishment must not be imposed on a person found guilty of misbehaviour if criminal proceedings have been, or are likely to be, brought in respect of substantially the same facts as those on which the person has been found guilty.

#### **Misbehaviour occurring in other detention centres**

48. Misbehaviour may be dealt with by the superintendent even though it occurred, or was alleged to have occurred, while the detainee was detained in another detention centre or in the custody of the superintendent of another detention centre.

#### **Transfer of inquiries**

49. The superintendent of one detention centre may transfer to the superintendent of another detention centre the conduct of an inquiry relating to a complaint concerning a detainee who has been transferred to the other detention centre.

#### **Recording of punishment**

50. (1) When the superintendent imposes a punishment under section 21 of the Act, the superintendent must keep a record of the following particulars:

- (a) particulars of the detainee's name and age;
- (b) particulars of the dates and times when the misbehaviour occurred;
- (c) particulars of the dates and times of the inquiry into the complaint of alleged misbehaviour;
- (d) particulars of the name and official capacity of the complainant;
- (e) particulars of the detainee's plea;

- (f) particulars of the evidence given at the inquiry;
  - (g) particulars of the reasons for which the detainee was found guilty of misbehaviour;
  - (h) particulars of the punishment imposed on the detainee and of the reasons for which that particular punishment was imposed.
- (2) The superintendent must forward to the Director-General, within 10 days after the end of each calendar month, a copy of all records made by the superintendent under this clause for that month.

### **Division 3—Serious misbehaviour**

#### **Complaints of serious misbehaviour**

**51.** The superintendent must, as soon as practicable after it is alleged that a detainee has been guilty of serious misbehaviour, make arrangements with a Children's Magistrate for hearing the complaint.

#### **Notice of hearing**

**52. (1)** The superintendent must cause a notice to be served on the detainee concerned, stating the allegation and advising that the detainee is required to appear before the Children's Court for the purpose of hearing the complaint.

**(2)** The notice must state:

- (a) the name of the complainant; and
- (b) the nature of the alleged misbehaviour; and
- (c) the date and time when, and the place where, the detainee's appearance before the Children's Court is required; and
- (d) that the detainee must indicate to the superintendent, not later than 8 hours prior to the detainee's appearance before the Children's Court, whether or not the alleged serious misbehaviour is admitted or denied; and
- (e) that the detainee is entitled to be legally represented at the hearing; and
- (f) that the detainee is entitled to give evidence before the Children's Court in respect of the alleged serious misbehaviour.

**(3)** It is the duty of the superintendent to ensure, as far as possible, that the detainee understands the meaning of the notice.

**PART 7—MISCELLANEOUS****Report on inspection of detention centre by officer**

53. For the purposes of section 7 (3) of the Act, the prescribed matters which must be dealt with in a report are the following:

- (a) the physical, psychological and emotional well-being of detainees;
- (b) the social, cultural and educational development of detainees;
- (c) the general control and management of detention centres;
- (d) the morale, conduct and functions of persons employed in the detention centre;
- (e) the condition of the premises (including the grounds, buildings, furniture, equipment and amenities) of the detention centre;
- (f) the relationship between the detention centre and the neighbouring community;
- (g) the existence of any contraventions of the Act or this Regulation;
- (h) the adequacy of programs of training for detainees;
- (i) the maintenance of order among detainees;
- (j) the security of the detention centre;
- (k) the nature, quality and extent of any arrangements that exist for staff training and development;
- (l) any significant problems arising from the matters referred to in paragraphs (a)–(k);
- (m) any matters that are deserving of commendation;  
any recommendations for the improvement of the detention centre;
- (o) such other matters as the Director-General may require to be dealt with in the report.

**Returns relating to persons detained for trial or appeal**

54. A return referred to in section 39 (1) of the Act must contain the following particulars in relation to each person detained for trial or appeal at the detention centre at the end of the month to which the report relates:

- (a) the name and date of birth of the person;
- (b) the name and address of the place where the person is detained;

- (c) the date on which the person's trial or appeal is set down for hearing or (if a hearing date has not been fixed) the date on which the matter is next to be mentioned;
- (d) the total period during which the person has so far been detained awaiting trial or appeal;
- (e) whether the person is detained because bail is refused or because the person is unable to meet a bail condition;
- (f) any recommendation as to any means that may be available to expedite the hearing of the case.

#### **Accommodation of children not permitted in detention centres**

**55.** A child must not be provided with accommodation at a detention centre unless:

- (a) the child is a detainee; or
- (b) the child is being detained in the detention centre under the Intoxicated Persons Act 1979; or
- (c) the child is otherwise required to be detained in the detention centre.

#### **Delegation of superintendent's functions**

**56.** The superintendent of a detention centre may delegate the superintendent's functions under this Regulation to the deputy superintendent or (with the consent of the Director-General) to any other member of staff of the detention centre who is an officer or temporary employee in the Public Service.

#### **Repeal**

**57. (1)** The Children (Detention Centres) Regulation 1988 is repealed.

**(2)** Any act, matter or thing that, immediately before the repeal of the Children (Detention Centres) Regulation 1988, had effect under that Regulation continues to have effect under this Regulation.

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**SCHEDULE 1—MISBEHAVIOUR**

(Cl. 39)

**PART 1—MINOR MISBEHAVIOUR****Disobeying rules or instructions**

1. A detainee must not breach any of the published rules of the detention centre or disobey any reasonable instruction given by a detention centre staff member.

**Lying**

2. A detainee must not tell lies which adversely affect the good order and discipline of the detention centre.

**Unauthorised telephone calls**

3. A detainee must not make telephone calls other than those authorised by a detention centre staff member.

**Deliberate harassment or provocation**

4. A detainee must not deliberately use either words or actions to harass or provoke other detainees, detention centre staff members or any other person.

**Damage to Government or personal property**

5. A detainee must not, unless by accident, cause damage to any Government property or to the personal property of another detainee, a detention centre staff member or any other person in the detention centre.

**Abusive, indecent or threatening language**

6. A detainee must not use abusive, indecent or threatening language when speaking to another person in the detention centre, or when corresponding or communicating with persons either in the detention centre or elsewhere.

**Subversive behaviour**

7. A detainee must not, by word or action, attempt to undermine the good order or discipline of a detention centre, or encourage other detainees to behave in such a way as to disrupt the good order and discipline of the detention centre.

**Unauthorised entry to certain areas**

8. A detainee must not, unless with the permission of a detention centre staff member, enter a room, office, storeroom or other area to which entry by detainees has been clearly prohibited.

**Possession of unauthorised articles**

9. A detainee must not receive, possess, or pass on to others, any article which is not of a kind that has been authorised by the Superintendent.

**Fighting**

10. A detainee must not become involved, or entice others to become involved, in fights with other detainees.

**Unauthorised use of alarms or equipment**

11. A detainee must not, unless authorised by a detention centre staff member or responding to a perceived emergency, use any alarm, fire fighting equipment or first aid supplies.

**Petty stealing**

12. A detainee must not steal.

**Refusal to work or participate in activities**

13. A detainee must not, except with reasonable excuse, refuse to perform properly allocated duties or to participate in authorised program activities.

**PART 2—SERIOUS MISBEHAVIOUR****Assault**

14. A detainee must not assault or attempt to assault any other person.

**Concealment for purpose of escape**

15. A detainee must not hide, or assist another detainee to hide, in an attempt to escape.

**Insubordination**

16. A detainee must not defy the reasonable instructions of detention centre staff or refuse to comply with the established rules or routines of the detention centre.

**Inciting misbehaviour**

17. A detainee must not incite other detainees to engage in behaviour which seriously disrupts the good order or discipline of the detention centre.

**Mistreatment of animals**

18. A detainee must not maim, wound, beat or cruelly ill-treat any animal.

**Unauthorised medications or substances**

19. A detainee must not procure, possess or supply to other detainees unauthorised medications or substances likely to be injurious to health.

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SCHEDULE 1—MISBEHAVIOUR

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**EXPLANATORY NOTE**

The object of this Regulation is to repeal and replace the Children (Detention Centres) Regulation 1988 with generally no change in matters of substance. The Regulation deals with the following matters:

- (a) the administration of detention centres, including the classification of detainees, the rights of detainees and the rules and general routines for detention centres (Part 2);
- (b) persons who may visit detainees and rules to be observed in relation to visits and the sending of parcels or letters to or by detainees (Part 3);
- (c) the granting of day leave or overnight leave (Part 4);
- (d) the maintenance of order in detention centres (Part 5);
- (e) prescribing conduct to be treated as misbehaviour and the procedure for dealing with complaints of misbehaviour against detainees (part 6);
- (f) matters to be included in reports of inspections of detention centres (clause 53);
- (g) particulars to be included in returns relating to persons detained for trial or appeal at detention centres (clause 54);
- (h) specifying the circumstances in which a child may be provided with accommodation at a detention centre (clause 55);
- (i) the delegation of a superintendent's functions (clause 56);
- (j) formal matters (Part 1 and clause 57).

This Regulation is made under the Children (Detention Centres) Act 1987, including section 45 (the general regulation making power) and various other sections referred to in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.

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