



New South Wales

# Children (Detention Centres) Regulation 2005

under the

Children (Detention Centres) Act 1987

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

ANTHONY KELLY, M.L.C.,  
Minister for Juvenile Justice

## Explanatory note

The object of this Regulation is to remake, with only minor changes in substance, the provisions of the *Children (Detention Centres) Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the following matters:

- (a) the administration of detention centres, including the classification of detainees (Part 2),
- (b) persons who may visit detainees and the rules to be observed in relation to visits and the sending of parcels or letters to or by detainees (Part 3),
- (c) the making of complaints in relation to a detention centre (Part 4),
- (d) the granting of day leave or overnight leave (Part 5),
- (e) the maintenance of order in detention centres (Part 6),
- (f) prescribing conduct to be treated as misbehaviour and the procedure for dealing with allegations of misbehaviour against detainees (Part 7 and Schedule 1),
- (g) parole orders in relation to detainees (Part 8),
- (h) forms for notice of revocation of parole orders, arrest warrants and warrants of commitment (Schedule 2),
- (i) other miscellaneous matters (Parts 1 and 9).

This Regulation is made under the *Children (Detention Centres) Act 1987*, including section 45 (the general regulation-making power) and the sections mentioned in the Regulation.

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## 2005 No 521

Clause 1 Children (Detention Centres) Regulation 2005

Part 1 Preliminary

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## Children (Detention Centres) Regulation 2005

under the

Children (Detention Centres) Act 1987

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Children (Detention Centres) Regulation 2005*.

#### 2 Commencement

This Regulation commences on 1 September 2005.

**Note.** This Regulation replaces the *Children (Detention Centres) Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

***Aboriginal person*** means a person who:

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

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

- (a) any of the detainee's property that has not been surrendered or sent away under section 17 of the Act, or
- (b) any of the detainee's property that has been lawfully acquired by the detainee since the detainee was admitted into a detention centre.

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

***classified person*** means:

- (a) a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of ***detention order*** in section 3 of the Act, or

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(b) a person who is a person subject to control by virtue of an order referred to in paragraph (a) or (b) of that definition.

**complaints guidelines** means guidelines prepared by the Director-General under clause 44.

**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.

**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).

**letter** means any letter, card, telegram, electronic mail message, 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.

**registered nurse** means a nurse registered under the *Nurses and Midwives Act 1991*.

**the Act** means the *Children (Detention Centres) Act 1987*.

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

- (a) identifies as a Torres Strait Islander, and

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Part 1 Preliminary

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- (b) is accepted by the Torres Strait Islander community as a Torres Strait Islander.
- (2) In this Regulation, a reference to a legal practitioner includes a reference to an Australian legal practitioner within the meaning of the *Legal Profession Act 2004*.  
**Note.** At the commencement of this Regulation, the *Legal Profession Act 2004* was uncommenced.
- (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) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 2.
- (5) Notes included in this Regulation do not form part of this Regulation.



## Part 2 Administration

### 4 General routines

- (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 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.
- (4) 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) 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.

### 5 Admission of detainees

- (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 centre manager 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 for making complaints in accordance with the complaints guidelines,
  - (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.

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Part 2 Administration

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- (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 centre manager, produce for inspection all property in the detainee's possession.
- (5) The centre manager may exercise the centre manager's functions under section 17 of the Act in respect of any property produced for inspection as referred to in subclause (4).

### 6 Information to be given to detainees

- (1) When a detainee is received into a detention centre to serve a detention period, the centre manager of the detention centre must give to the detainee information in writing concerning the nature and effect of the sentence.
- (2) The information must, in every case, include such information as the Minister determines to be the minimum necessary information.

### 7 Classification of detainees

For the purposes of section 16 of the Act, the following classes of detainees are prescribed:

- (a) 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,
- (b) Class B: all other detainees.

### 8 Health and medical attention

- (1) Each detainee must be supplied with such medical and dental treatment as, in the opinion of a medical officer, dental officer or registered nurse, 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 or registered nurse recommends to the centre manager that the employment, diet, exercise or other treatment of a detainee should be varied or modified for reasons of health, the centre manager must carry the recommendation into effect in so far as is reasonably practicable.

- (4) If it is not reasonably practicable to carry the recommendation or any part of it into effect, the centre manager must report that fact to the Director-General.
- (5) The centre manager 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 or a registered nurse, sufficiently serious as to require the detainee's isolation.

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

- (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.

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

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 who ordered the segregation.

#### **11 Property**

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

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- (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 centre manager.
- (3) Any approved property of a detainee that, in the opinion of the centre manager, is kept or used in such a manner as to be a risk to security, safety or good order may be retained by the centre manager.
- (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 centre manager.
- (6) The property of a detainee transferred from one detention centre to another must be transferred from the custody of the centre manager of the former detention centre to the custody of the centre manager of the new detention centre, together with such inventories and records as may be directed by the Director-General.

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

- (1) A detainee may acquire any books, newspapers, magazines or other printed material approved by the centre manager.
- (2) Any book, newspaper, magazine or other printed material in the possession of a detainee which, in the opinion of the centre manager, 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 centre manager in such manner as is reasonable in the circumstances, taking into account the nature of the material.

### **13 Unauthorised possession of property**

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

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

### **14 Disposal of property**

- (1) Any property of a detainee that is retained by the centre manager may be disposed of by the centre manager 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 centre manager considers it necessary for the maintenance of hygiene.
- (3) Before any property is destroyed, the centre manager must, if practicable, cause the detainee to be informed of its proposed destruction and of the reason for its destruction.

**15 Records to be kept concerning property**

A record must be kept by the centre manager, in a manner approved by the Director-General, of any property of a detainee:

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

**16 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.
- (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.

**17 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,

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Part 2 Administration

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- (d) alcohol and other drug rehabilitation 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) Such an incentive scheme is to comply with any guidelines issued by the Director-General in relation to incentive schemes.
- (4) 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.

### 18 Religious observance

- (1) The centre manager 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 centre manager 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:
- (a) may state the detainee's religious denomination, or
  - (b) may state that the detainee is of no religious denomination, or
  - (c) may decline to provide information regarding the detainee's religious denomination.
- (3) A record must be kept at a detention centre in relation to each detainee at the centre:
- (a) of the detainee's religious denomination, or
  - (b) of the fact that the detainee is of no religious denomination, or
  - (c) that the detainee declined to provide information regarding the detainee's religious denomination.
- (4) The centre manager 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 centre manager 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 any inducement, or impose any 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.

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Clause 19 Children (Detention Centres) Regulation 2005

Part 3 Visits and communications

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### **Part 3 Visits and communications**

#### **Division 1 Visits**

##### **19 Visiting days and times**

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

##### **20 Visits by relatives and friends**

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

##### **21 Visits by legal practitioners and their clerks**

- (1) A detainee may be visited:
  - (a) by the detainee's legal practitioner, or
  - (b) by a clerk authorised in writing by the detainee's legal practitioner,  
to discuss or transact legal business (whether civil or criminal) in which the detainee has an interest.
- (2) Visits to a detainee by a legal practitioner or legal practitioner'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 centre manager may, if of the opinion that it is convenient and practicable to do so, permit a visit to a detainee by a legal practitioner or legal practitioner'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.



**22 Visits by diplomatic or consular representatives**

- (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.

**23 Visits to Aboriginal persons and Torres Strait Islanders**

A detainee who is an Aboriginal person 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 Aboriginal persons or Torres Strait Islanders and that is approved by the Director-General.

**24 Other visits**

- (1) The centre manager may authorise visits, in addition to other visits authorised by this Division, in any case in which the centre manager considers it appropriate.
- (2) Without limiting the generality of subclause (1), the centre manager may authorise additional visits to a detainee if a medical officer has reported to the centre manager that the detainee is ill.

**25 Procedure for visits**

- (1) The centre manager 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 centre manager for that purpose.
- (3) A visit to a detainee may, with the consent of the Director-General or the centre manager, take place outside the sight and hearing of an officer.
- (4) However, 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.

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Clause 26 Children (Detention Centres) Regulation 2005

Part 3 Visits and communications

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- (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.

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

- (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, except in accordance with this clause.  
Maximum penalty: 5 penalty units.
- (2) The centre manager, or an officer authorised by the centre manager 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 legal practitioner or legal practitioner's clerk referred to in clause 21, or
  - (b) a diplomatic or consular representative, or a representative of a national or international organisation, referred to in clause 22, or
  - (c) a field officer referred to in clause 23, or
  - (d) an officer of the Crown authorised to visit a detainee,
- 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.

### 27 Refusal and termination of visits

- (1) A detainee who is of or above the age of 16 years may refuse to receive a visitor.
- (2) The centre manager may, despite any other provision of this Division, refuse to permit a visit if, in the opinion of the centre manager, 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 centre manager may terminate a visit to a detainee and direct the visitor to leave the detention centre if, in the opinion of the centre manager:
- (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 centre manager must cause a record to be kept of:
  - (a) each refusal of a visit (whether by the detainee or the centre manager) and each termination of a visit by the centre manager, and
  - (b) the reasons for the refusal or termination.

## **Division 2 Letters and parcels**

### **28 Written communication with detainees**

- (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.

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

- (1) A letter or parcel (other than a letter referred to in clause 30) for delivery to or dispatch from a detainee may be opened and inspected by the centre manager or an officer authorised by the centre manager to do so if, in the opinion of the centre manager, the security, safety or good order of the detention centre is likely to be adversely affected by the delivery or dispatch.
- (2) The centre manager 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 centre manager, is likely to adversely affect the security, safety or good order of the detention centre.
- (3) If the centre manager takes possession of a letter or parcel or its contents, the centre manager must ensure that the detainee to whom the letter or parcel is addressed is given notice of that fact.

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Clause 30 Children (Detention Centres) Regulation 2005

Part 3 Visits and communications

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### 30 Correspondence with external bodies

- (1) In this clause:
- Commonwealth Ombudsman** means the Commonwealth Ombudsman appointed under the *Ombudsman Act 1976* of the Commonwealth.
- privileged letter**, in relation to a detainee, means a letter that has been addressed by the detainee to the New South Wales Ombudsman, the Commonwealth Ombudsman, the Judicial Commission, the Australian Crime Commission, the New South Wales Crime Commission, the Independent Commission Against Corruption, the Anti-Discrimination Board, the Administrative Decisions Tribunal, the Human Rights and Equal Opportunity Commission, the Privacy Commissioner, the Legal Aid Commission of New South Wales, the Legal Services Commissioner, a Member of Parliament, a legal practitioner or a police officer.
- (2) If a detainee delivers to an officer a privileged letter:
- the officer must send the letter immediately to the person to whom it is addressed, and
  - the letter must not be opened, inspected or read by anyone except the person to whom it has been addressed or by some person authorised by that person.
- (3) Any letter addressed to a detainee by:
- the New South Wales Ombudsman, or
  - the Commonwealth Ombudsman, or
  - the Judicial Commission, or
  - the Australian Crime Commission, or
  - the New South Wales Crime Commission, or
  - the Independent Commission Against Corruption, or
  - the Anti-Discrimination Board, or
  - the Administrative Decisions Tribunal, or
  - the Human Rights and Equal Opportunity Commission, or
  - the Privacy Commissioner, or
  - the Legal Aid Commission of New South Wales, or
  - 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 legal practitioner sends to a detainee a letter in a sealed envelope accompanied by a letter addressed to the centre manager claiming privilege in respect of the letter in the sealed

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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 centre manager 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 centre manager may require the detainee to open the sealed envelope in the centre manager'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 centre manager, is likely to adversely affect the security, safety or good order of the detention centre, the centre manager 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.

### **31 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 30 (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.

### **32 Communication with detainees and inmates in other detention centres and correctional centres**

A detainee may:

- (a) communicate by letter with a detainee who is detained in another detention centre, but only with the authority of the centre managers of both centres, and
- (b) communicate by letter with an inmate detained in a correctional centre, but only with the authority of the governor of the correctional centre and the centre manager of the detention centre.

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Clause 33 Children (Detention Centres) Regulation 2005

Part 3 Visits and communications

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### **Division 3 Communications with staff members**

#### **33 Requests to speak to centre manager or other staff members**

- (1) An officer who receives a request from a detainee (whether orally or in writing) for permission to speak to the centre manager or other staff member must, as soon as practicable, convey the request to the centre manager or other staff member.
- (2) The centre manager or other staff member must give a detainee from whom the centre manager or other staff member receives such a request an opportunity to speak to the centre manager or other staff member on the day on which the request is conveyed or made to the centre manager or other staff member or as soon as practicable after that day.
- (3) When giving a detainee an opportunity to speak, the centre manager or other staff member must consider what the detainee has to say and must inform the detainee of any action that the centre manager or other staff member has taken or proposes to take or (if no such action is taken or proposed) of the fact that the centre manager or other staff member does not propose to take any action.

## Part 4 Complaints

### 34 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 42.

**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 who deals with the complaint.

**representative** of a detainee, means:

- (a) a family member or carer of the detainee or any other person who is significant to 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.

### 35 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.

### 36 How complaints may be made

- (1) A complaint may be addressed, either orally 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.

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Clause 37 Children (Detention Centres) Regulation 2005

Part 4 Complaints

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- (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 only, a complaint addressed to the Director Transport Placements and Drug Intelligence Branch 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.

### 37 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.

### 38 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



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- (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.

**39 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.

**40 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

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Part 4 Complaints

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- (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 orally.

### 41 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.

### 42 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 other than staff of the centre), 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, but not complaints made to the Manager Juvenile Placements/Transport Unit, being complaints that are treated as complaints addressed to the centre manager), and
  - (c) by the Director Transport Placements and Drug Intelligence Branch (in relation to complaints made to that person, being complaints that are treated as complaints addressed to the centre manager).
- (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.

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**43 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.

**44 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.

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Clause 45 Children (Detention Centres) Regulation 2005

Part 5 Leave

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### Part 5 Leave

#### 45 Definitions

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.

*escorted absence* means absence from a detention centre granted under section 23A of the Act.

*fixed term* means a term of sentence of imprisonment where a court has declined to set a non-parole period.

*non-parole period* has the same meaning as it has in the *Crimes (Sentencing Procedure) Act 1999*.

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

*serious children's indictable offence* has the same meaning as it has in the *Children (Criminal Proceedings) Act 1987*.

#### 46 Matters to be taken into account before leave granted

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,

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- (h) any other matter that is, in the opinion of the Director-General, relevant to the decision.

**47 Day leave**

- (1) Day leave must not be granted to a person subject to control unless the prescribed portion of each detention period being served by the person has expired.
- (2) Subject to subclause (3):
- (a) if 2 or more detention periods are ordered to be served consecutively, the prescribed portions of each of those periods are also taken to run consecutively, so that:
- (i) the first portion begins on the date on which the first detention period begins, and
- (ii) each of the subsequent portions begins on the date immediately following the date on which the preceding portion ends, and
- (b) if 2 or more detention periods are ordered to be served concurrently, the prescribed portions of each of those periods are also taken to run concurrently.
- (3) However, if 2 or more detention orders are imposed in different proceedings, the prescribed portion of a detention period arising from a detention order imposed in the second or subsequent proceedings is not taken to have begun before the date on which that order is imposed.
- (4) In this clause:
- prescribed portion*** of a detention period means:
- (a) one half of the fixed term or non-parole period of the detention period, for a serious children's indictable offence committed by a classified person, and
- (b) one third of the fixed term or non-parole period of the detention period, for any other indictable offence committed by a classified person, and
- (c) one quarter of the fixed term or non-parole period of the detention period:
- (i) for any other offence committed by a classified person, or
- (ii) for any offence (whether indictable or not) committed by a person who is not a classified person.

## 2005 No 521

Clause 48 Children (Detention Centres) Regulation 2005

Part 5 Leave

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### 48 Overnight leave

- (1) Overnight leave must not be granted to a person subject to control unless the prescribed portion of each detention period being served by the person has expired.
- (2) Subject to subclause (3):
  - (a) if 2 or more detention periods are ordered to be served consecutively, the prescribed portions of each of those periods are also taken to run consecutively, so that:
    - (i) the first portion begins on the date on which the first detention period begins, and
    - (ii) each of the subsequent portions begins on the date immediately following the date on which the preceding portion ends, and
  - (b) if 2 or more detention periods are ordered to be served concurrently, the prescribed portions of each of those periods are also taken to run concurrently.
- (3) However, if 2 or more detention orders are imposed in different proceedings, the prescribed portion of a detention period arising from a detention order imposed in the second or subsequent proceedings is not taken to have begun before the date on which that order is imposed.
- (4) In this clause:

***prescribed portion*** of a detention period means:

  - (a) two thirds of the fixed term or non-parole period of the detention period, for an indictable offence (whether or not a serious children's indictable offence) committed by a classified person, and
  - (b) one half of the fixed term or non-parole period of the detention period:
    - (i) for any other offence committed by a classified person, or
    - (ii) for any offence (whether indictable or not) committed by a person who is not a classified person.

## **Part 6 Maintenance of order**

### **49 Order generally**

- (1) Officers must seek to influence detainees through example and leadership and must seek to enlist their willing co-operation.
- (2) At all times, the treatment of detainees must be such as to encourage their self-respect and sense of personal responsibility.
- (3) 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.

### **50 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.

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

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

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Clause 51 Children (Detention Centres) Regulation 2005

Part 6 Maintenance of order

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- (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 7 Misbehaviour

### Division 1 Misbehaviour generally

#### 52 Definitions

- (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.

#### 53 Misbehaviour

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.

#### 54 Allegations of misbehaviour

- (1) An allegation that a detainee is guilty of misbehaviour may be made, orally or in writing, to the centre manager.
- (2) An oral allegation must be recorded in writing by the centre manager.

#### 55 Visits by prescribed persons

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

- (a) a legal practitioner's clerk authorised in writing by a detainee's legal practitioner,
  - (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 23,
  - (e) a person conducting an inspection of the detention centre in accordance with section 8 of the Act.
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Clause 56 Children (Detention Centres) Regulation 2005

Part 7 Misbehaviour

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### **Division 2 Minor misbehaviour**

#### **56 Allegations of minor misbehaviour**

An allegation that a detainee is guilty of minor misbehaviour is to be heard and determined by the centre manager.

#### **57 Inquiry to be held**

- (1) The centre manager must inquire into an allegation as soon as is reasonably practicable but, in any event, within 24 hours after the allegation is made.
- (2) Before proceeding to inquire into an allegation, the centre manager must inform the detainee of the name of the person who made the allegation and of the substance of the allegation.

#### **58 Adjournments**

The centre manager may adjourn an inquiry for any reason that seems to the centre manager to be sufficient.

#### **59 Procedure after guilty plea**

The centre manager may punish a detainee in accordance with section 21 of the Act if the detainee admits his or her guilt and the centre manager is satisfied that the detainee is guilty of the misbehaviour charged in the allegation.

#### **60 Procedure after not guilty plea**

- (1) If the detainee denies his or her guilt, the detainee must be given an opportunity to cross-examine the person who made the allegation and any witnesses called by that person.
- (2) If the detainee gives evidence at the inquiry, the centre manager and the person who made the allegation 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 centre manager must adjourn the inquiry until the services of an interpreter can be obtained.
- (4) At the conclusion of evidence, both the person who made the allegation and the detainee (in that order) must be given an opportunity to address the centre manager.

**61 Procedure generally**

- (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 allegation permit.
- (2) Neither the person who made the allegation nor the detainee are entitled to be represented by a legal practitioner or by any other person.
- (3) If the detainee refuses or fails to attend the inquiry, the centre manager may hear and determine the allegation in the detainee's absence.
- (4) Evidence must not be required to be given on oath at the inquiry.
- (5) The centre manager may allow such persons to be present and to give evidence at the inquiry as the centre manager 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.

**62 Misbehaviour occurring in other detention centres**

Misbehaviour may be dealt with by the centre manager 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 centre manager of another detention centre.

**63 Transfer of inquiries**

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

**64 Recording of punishment**

- (1) When the centre manager imposes a punishment under section 21 of the Act, the centre manager 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 allegation of misbehaviour,

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Part 7 Misbehaviour

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- (d) particulars of the name and official capacity of the person who made the allegation,
  - (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 centre manager must forward to the Director-General, within 10 days after the end of each calendar month, a copy of all records made by the centre manager under this clause for that month.

### Division 3 Serious misbehaviour

#### 65 Allegations of serious misbehaviour

The centre manager 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 allegation.

#### 66 Notice of hearing

- (1) The centre manager 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 allegation.
- (2) The notice must state:
- (a) the name of the person who made the allegation, and
  - (b) the nature of the alleged serious 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 centre manager, 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 centre manager to ensure, as far as possible, that the detainee understands the meaning of the notice.

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## Part 8 Parole

### 67 Definitions

In this Part:

**applied Act** means the *Crimes (Administration of Sentences) Act 1999*, as applied to a detainee by section 29 of the *Children (Detention Centres) Act 1987*.

**parole order** means an order, whether made under the applied Act or otherwise, directing the release of a detainee from a detention centre on parole.

**supervisor** means:

- (a) a person employed in the Department of Juvenile Justice as a supervisor for the purposes of this Part (whether or not the person has other duties to perform in the Department), or
- (b) a probation and parole officer employed in the Department of Corrective Services.

### 68 Material in support of parole orders (sentences of more than 3 years): section 135 of applied Act

- (1) For the purposes of section 135 of the applied Act, the Director-General is to arrange for the preparation of material to assist the Children's Court in its consideration of whether a detainee should be released on parole.
- (2) The material must include:
  - (a) a pre-discharge report which describes:
    - (i) the detainee's overall behavioural response while in detention, and
    - (ii) the detainee's involvement in the various programs offered at the detention centre, and
    - (iii) any significant community support available to the detainee on discharge, and
    - (iv) the details of any proposed post-release supervision, and
    - (v) any additional information that the Children's Court considers necessary in its consideration of parole, and
  - (b) a psychological or psychiatric assessment, and
  - (c) a copy of any current court orders, and
  - (d) a copy of the sentencing court's comments at the time of sentencing.

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Part 8 Parole

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### 69 Parole orders

- (1) A parole order made under the applied Act must be in writing in a form approved by the Minister.
- (2) A copy of the order is to be given to the offender, and further copies are to be sent to the following persons:
  - (a) the centre manager of the detention centre in which the detainee is kept,
  - (b) the Director-General.
- (3) Copies of the order sent to the centre manager of the detention centre are, if practicable, to be sent so as to arrive at the detention centre at or before the time the detainee arrives.

### 70 Detainee to be given explanation of parole order

- (1) On a detainee's day of release from the detention centre in accordance with a parole order, the centre manager must ensure that:
  - (a) the order is read to the detainee, and
  - (b) the effect of the order is explained to the detainee in language that is capable of being readily understood by the detainee, and
  - (c) the detainee indicates that the detainee understands the conditions on which the detainee is to be released by signing a statement to that effect on a copy of the order, and
  - (d) all copies of the order are endorsed with the detainee's date of release, and
  - (e) a copy of the order is sent to the Director-General, and
  - (f) a copy of the order is given to the detainee, and
  - (g) the copy of the order containing the signed statement referred to in paragraph (c) is retained at the detention centre.
- (2) If a detainee is subject to more than one parole order, this clause does not require common provisions in the orders to be read to the detainee more than once.

### 71 Standard conditions applying to parole: section 128 of applied Act

For the purposes of section 128 (1) (a) of the applied Act, the following are standard conditions of parole:

- (a) the detainee must be of good behaviour and must not, during the term of the order, commit any offence,
- (b) the order may be revoked if the detainee contravenes any of the conditions of the order,

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- (c) the order may be revoked if the Children's Court determines that it has sufficient reason to believe that the detainee, having been released from custody, has not adapted to normal lawful community life.

**72 Imposition and extension of supervision conditions: section 128 of applied Act**

- (1) A condition of a parole order may require the detainee to be subject to supervision for up to:
- (a) 3 years, in the case of a classified person, or
  - (b) 2 years, in any other case,
- from the date on which the detainee is released in accordance with the order.
- (2) For the purposes of section 128 (3) of the applied Act, the prescribed supervision is supervision by a supervisor.
- (3) As soon as practicable after receiving a parole order that requires a detainee to be supervised, the Director-General must assign a supervisor to supervise the detainee.
- (4) The Director-General may from time to time assign another supervisor to supervise the detainee in place of the supervisor previously assigned and, in that event, must cause notice of that fact to be sent to the detainee.

**73 Supervision conditions**

- (1) This clause applies to a detainee whose parole order includes a condition requiring that the detainee be subject to supervision.
- (2) While the detainee is subject to supervision by a supervisor under such a condition, the detainee has the following obligations:
- (a) to obey all reasonable directions of the supervisor,
  - (b) to report to the supervisor (or to another person nominated by the supervisor) at such times and places as the supervisor may from time to time direct,
  - (c) to be available for interview at such times and places as the supervisor (or the supervisor's nominee) may from time to time direct,
  - (d) to reside at an address agreed on by the supervisor, and to receive visits at that address by the supervisor at such times as the supervisor considers necessary,
  - (e) not to travel outside the boundaries of New South Wales without the express approval of the Director-General,

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- (f) not to leave Australia without the permission of the Children's Court,
  - (g) to enter into employment arranged or agreed on by the supervisor, or to make himself or herself available for employment as instructed by the supervisor,
  - (h) to notify the supervisor of any intention to change his or her employment:
    - (i) if practicable, before the change occurs, or
    - (ii) otherwise, at his or her next interview with the supervisor,
  - (i) not to associate with any person or persons specified by the supervisor,
  - (j) not to frequent or visit any place or district designated by the supervisor.
- (3) A detainee's supervisor may, with the concurrence of the Director-General, direct that the conditions of the detainee's parole order in relation to supervision are suspended.
- (4) Such a direction takes effect when notice of the direction is given to the detainee.

### **74 Variation of conditions: section 128 of applied Act**

- (1) If a notice has been served under section 128 (2) (b) of the applied Act on a detainee who is a child, the Registrar of the Children's Court must send written advice to the Director-General that such a notice has been served and must include with that advice a copy of the notice.
- (2) If the Children's Court varies the conditions of a parole order under section 128 (2) (b) of the applied Act so as to make the detainee subject to supervision under the order, or so as to affect the supervision of the detainee, the Registrar of the Children's Court must send notice of the variation to the Director-General.

### **75 Revocation of parole order before release: section 130 of applied Act**

- (1) For the purposes of section 130 of the applied Act, the circumstances set out in subclause (2) are prescribed as circumstances in which the Children's Court may revoke a parole order.
- (2) The circumstances concerned are circumstances in which the Children's Court, after the making of the order and before the release of the detainee, decides that it has sufficient reason to believe that the detainee, if released from custody, would not be able to adapt to normal lawful community life.



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- (3) The Children's Court must send copies of an order under section 130 of the applied Act to the centre manager of the detention centre in which the detainee is kept.
  - (4) As soon as practicable after receiving the order, the centre manager must ensure that:
    - (a) the order is read to the detainee, and
    - (b) the effect of the order is explained to the detainee in language that is capable of being readily understood by the detainee, and
    - (c) the detainee's rights to a review of the revocation are explained to the detainee in language that is capable of being readily understood by the detainee, and
    - (d) a copy of the order is handed to the detainee.
  - (5) The Children's Court must send notice of the revocation of a parole order under section 130 of the applied Act to the Director-General.

**76 Review by the Children's Court of intention to refuse release on parole: sections 138 and 139 of applied Act**

- (1) A notice under section 138 (1) (b) of the applied Act must be sent to the centre manager of the detention centre in which the detainee is kept.
- (2) As soon as practicable after receiving the notice, the centre manager must ensure that:
  - (a) the notice is read to the detainee, and
  - (b) the effect of the notice is explained to the detainee in language that is capable of being readily understood by the detainee, and
  - (c) the notice is handed to the detainee.
- (3) Notice of a detainee's intention to make representations to the Children's Court concerning release on parole:
  - (a) must be given by the detainee to the centre manager of the detention centre in which the detainee is kept, and
  - (b) must be sent by the centre manager to a Registrar of the Children's Court.
- (4) When the Children's Court reconsiders whether the detainee should be released on parole, the detainee is entitled to be represented by a legal practitioner for the purpose of making representations in respect of which notification has been given to the Registrar of the Children's Court in accordance with section 139 of the applied Act.

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### **77 Decision on review of parole refusal: section 141 of applied Act**

- (1) A notice under section 141 (4) (b) of the applied Act must be sent to the centre manager of the detention centre in which the detainee is kept.
- (2) As soon as practicable after receiving the notice, the centre manager must ensure that:
  - (a) the notice is read to the detainee, and
  - (b) the effect of the notice is explained to the detainee in language that is capable of being readily understood by the detainee, and
  - (c) the detainee's rights concerning the Children's Court's decision are explained to the detainee in language that is capable of being readily understood by the detainee, and
  - (d) the notice is handed to the detainee.
- (3) The centre manager must keep a copy of the notice.
- (4) The Registrar of the Children's Court must send a copy of the notice to the Director-General.

### **78 Revocation of parole order and review of revocation: section 173 of applied Act**

- (1) For the purposes of section 173 (2) (a) of the applied Act, the prescribed form of revocation notice that is to be served on a detainee is set out in Form 1.
- (2) The notice must be sent to the centre manager of the detention centre in which the detainee is kept.
- (3) As soon as practicable after receiving the notice, the centre manager must ensure that:
  - (a) the notice is read to the detainee, and
  - (b) the effect of the notice is explained to the detainee in language that is capable of being readily understood by the detainee, and
  - (c) the notice is handed to the detainee.
- (4) Notice of a detainee's intention to make representations to the Children's Court concerning the revocation of a parole order:
  - (a) must be given by the detainee to the centre manager of the detention centre in which the detainee is kept, and
  - (b) must be sent by the centre manager to the Registrar of the Children's Court.

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**79 Decision on review of revocation: section 175 of applied Act**

- (1) The Registrar of the Children's Court must send written notice of a decision of the Children's Court following a review under section 175 of the applied Act to the centre manager of the detention centre in which the detainee is kept.
- (2) As soon as practicable after receiving the notice, the centre manager must ensure that:
  - (a) the notice is read to the detainee, and
  - (b) the effect of the notice is explained to the detainee in language that is capable of being readily understood by the detainee, and
  - (c) the detainee's rights concerning the decision are explained to the detainee in language that is capable of being readily understood by the detainee.
- (3) The Registrar of the Children's Court must send a copy of the notice to the Director-General.

**80 Notice of revocation of parole order: section 179 of applied Act**

- (1) If the Children's Court revokes a parole order as referred to in section 179 (1) of the applied Act, the Registrar of the Children's Court must send written notice of that fact to the following persons:
  - (a) the Director-General,
  - (b) the Children's Court that made the order.
- (2) The notice must be in a form approved by the Minister and must specify any direction given by the Children's Court as to the day on which the order is to be treated as having been revoked.

**81 Inquiry into suspected breach of a parole order: section 180 of applied Act**

- (1) A notice under section 180 (1) (a) of the applied Act calling on a detainee to appear before the Children's Court must be served on the detainee at least 7 days before the date set for the inquiry referred to in the notice.
- (2) The Registrar of the Children's Court must send a copy of every such notice to the Director-General.

**82 Arrest warrants: section 180 of applied Act**

A warrant for the arrest of a person under section 180 of the applied Act must be as set out in Form 2.

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### **83 Warrants of commitment: section 181 of applied Act**

A warrant for the commitment of a detainee to a detention centre under section 181 of the applied Act must be as set out in Form 3.

### **84 Delegation of functions**

A function conferred or imposed by this Part on the centre manager of a detention centre may be delegated to any officer of the Department of Juvenile Justice.

## Part 9 Miscellaneous

### 85 Report on inspection of detention centre by officer

For the purposes of section 7 (3) of the Act, the prescribed matters that 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 the detention centre,
- (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 security of the detention centre.

### 86 Returns relating to persons detained for trial or appeal

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.

### 87 Accommodation of children in detention centres

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

- (a) the child is a detainee, or

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- (b) the child is being detained in the detention centre under the *Intoxicated Persons Act 1979* or Part 16 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**Note.** Part 16 of the *Law Enforcement (Powers and Responsibilities) Act 2002* commences on 1 December 2005.

### 88 Attendance at youth justice conferences

For the purposes of the definition of *appropriate person or body* in section 42 (5) of the Act, a conference convenor, acting with the written authority of a conference administrator, under the *Young Offenders Act 1997* is prescribed.

### 89 Savings

Any act, matter or thing that, immediately before the repeal of the *Children (Detention Centres) Regulation 2000* had effect under that Regulation continues to have effect under this Regulation.

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## Schedule 1 Misbehaviour

(Clauses 52 and 53 (1))

### Part 1 Minor misbehaviour

#### 1 Disobeying rules or instructions

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.

#### 2 Lying

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

#### 3 Unauthorised telephone calls

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

#### 4 Deliberate harassment or provocation

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

#### 5 Damage to Government or personal property

A detainee must not deliberately 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.

#### 6 Abusive, indecent or threatening language

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.

#### 7 Subversive behaviour

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.

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Schedule 1 Misbehaviour

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### **8 Unauthorised entry to certain areas**

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.

### **9 Possession of unauthorised articles**

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 centre manager.

### **10 Fighting**

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

### **11 Unauthorised use of alarms or equipment**

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.

### **12 Stealing**

A detainee must not steal.

### **13 Refusal to work or participate in activities**

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**

### **14 Assault**

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

### **15 Concealment for purpose of escape**

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

### **16 Insubordination**

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.



**17 Inciting misbehaviour**

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

**18 Mistreatment of animals**

A detainee must not ill-treat any animal.

**19 Unauthorised medications or substances**

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 2 Forms

**Schedule 2 Forms**

(Clause 3 (4))

**Form 1 Notice of revocation of parole order**

(Clause 78)

(Crimes (Administration of Sentences) Act 1999, section 173)

TO ..... [Name of detainee]

TAKE NOTICE that the Children’s Court on ..... made an order for revocation of your parole to date from ..... The Children’s Court will reconvene on ..... at ..... [time] in order to reconsider the revocation of your parole.

- \* A copy of the order made which revoked your parole order is attached.
- \* Copies are attached of reports and other documents intended to be used by the Children’s Court in reaching its decision.
- \* You may make submissions to the Children’s Court with respect to \*the revocation of your parole order/\*the date of revocation of your parole order. If you wish to do so, you are required to notify the Registrar of the Children’s Court not later than .....

.....  
Registrar of the Children’s Court

\* Delete if inapplicable

**Form 2 Arrest warrant**

(Clause 82)

(Children (Detention Centres) Act 1987, section 29,  
Crimes (Administration of Sentences) Act 1999, section 180)

To the Commissioner of Police for the State of New South Wales, to all members of NSW Police and to all centre managers of detention centres in that State.

WHEREAS ..... was sentenced to .....  
by ..... [court] at ..... on ..... for the offence(s) of .....  
AND by order of the Children’s Court dated ..... was released from a detention centre on parole on ..... in accordance with the terms of the parole order, which order has been revoked,

NOW the Children’s Court issues this warrant authorising any member of the Police Force to apprehend .....

- \* and return him/her to a detention centre
- \* to serve the portion of his/her term of detention unexpired on .....
- \* and to remove him/her to .....
- \* for the purpose of conducting, within 7 days, an inquiry as to whether the order should be revoked.

\* The Children’s Court ordered the revocation of the Parole Order for breach of the following conditions of the order, namely: .....

This warrant is sufficient authority for the apprehension of ..... and \*his/her return to and detention in a detention centre.

Dated: .....

.....

Children’s Magistrate

\* Delete if inapplicable

TO ALL POLICE OFFICERS in the State of New South Wales

By virtue of section 180 of the Crimes (Administration of Sentences) Act 1999, as applied by section 29 of the Children (Detention Centres) Act 1987, this warrant is sufficient authority for you to arrest, or to have custody of, the detainee named in this warrant, to convey the detainee to the detention centre specified in this warrant and to deliver the detainee into the custody of the centre manager of that detention centre.

**Form 3 Warrant of commitment to detention centre**

(Clause 83)

(Children (Detention Centres) Act 1987, section 29, Crimes (Administration of Sentences) Act 1999, section 181)

TO THE CENTRE MANAGER of the detention centre at ..... in the State of New South Wales

WHEREAS ..... of ..... (*the detainee*) has been found guilty by the ..... Court of the following offence or offences: .....

AND WHEREAS the Court has made a detention order, within the meaning of the Children (Detention Centres) Act 1987, requiring the detainee to be detained in a detention centre for a term of ....., to commence on .....

AND WHEREAS the detainee has been released from custody on parole under a parole order, within the meaning of the Crimes (Administration of Sentences) Act 1999, in respect of that term of detention,

AND WHEREAS the Children’s Court has revoked the parole order,

YOU ARE HEREBY DIRECTED to receive the detainee into your custody there and (subject to the Children (Detention Centres) Act 1987 and to any order under that Act) to detain the detainee there for the remainder of the term of the detainee’s sentence.

.....

Children’s Magistrate

Date: .....

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Schedule 2      Forms

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TO ALL POLICE OFFICERS in the State of New South Wales

By virtue of section 181 of the *Crimes (Administration of Sentences) Act 1999*, as applied by section 29 of the *Children (Detention Centres) Act 1987*, this warrant is sufficient authority for you to arrest, or to have custody of, the detainee named in this warrant, to convey the detainee to the detention centre specified in this warrant and to deliver the detainee into the custody of the centre manager of that detention centre.

BY AUTHORITY