



New South Wales

# Children (Detention Centres) Amendment Regulation 2007

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 amend the *Children (Detention Centres) Regulation 2005* so as to make provision with respect to:

- (a) property surrendered to a centre manager under section 17 of the Act, and
- (b) the segregation of detainees under section 19 of the Act, and
- (c) the rights of detainees with respect to the possession of radios and other electronic equipment, and
- (d) the preparation of case plans for detainees, and
- (e) visits to detention centres, including procedures for the conduct of searches on visitors, the use of cameras and other recording equipment and the making of banning orders, and
- (f) the regulation of telephone calls by detainees, and
- (g) rights to day leave and overnight leave, and
- (h) the testing of detainees for the presence of drugs and alcohol, and
- (i) the definition of misbehaviour and the establishment of procedures for dealing with misbehaviour, and
- (j) the testing of juvenile justice officers for the presence of drugs and alcohol, and
- (k) the role of Justice Health in maintaining the health of detainees.

This Regulation is made under the *Children (Detention Centres) Act 1987*, including section 45 (the general power to make regulations) and sections 17, 20, 21, 24, 32A and 37M.

## **2007 No 84**

Clause 1 Children (Detention Centres) Amendment Regulation 2007

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# **Children (Detention Centres) Amendment Regulation 2007**

under the

Children (Detention Centres) Act 1987

### **1 Name of Regulation**

This Regulation is the *Children (Detention Centres) Amendment Regulation 2007*.

### **2 Commencement**

This Regulation commences on 2 March 2007.

### **3 Amendment of Children (Detention Centres) Regulation 2005**

The *Children (Detention Centres) Regulation 2005* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

**[1] Clause 3 Definitions**

Omit “or (b)” from paragraph (b) of the definition of *classified person* in clause 3 (1).

Insert instead “or (c)”.

**[2] Clause 3 (1)**

Insert in alphabetical order:

*approved laboratory* means a laboratory accredited by the New South Wales Department of Health and approved for the purposes of this Regulation by the Director-General.

*government analyst* means:

- (a) an analyst within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*, or
- (b) a person employed by the owner or operator of an approved laboratory as an analyst.

*Justice Health officer* means:

- (a) the Chief Executive Officer, Justice Health, or
- (b) a medical officer or other member of staff of Justice Health authorised by the Chief Executive Officer, Justice Health, to exercise the functions of a Justice Health officer for the purposes of this Regulation.

*visitor* includes any person who visits a detention centre, or who visits a detainee who is detained in a detention centre, but does not include a juvenile justice officer who is employed at the detention centre.

**[3] Clause 5 Admission of detainees**

Insert after clause 5 (5):

- (6) The centre manager, in relation to any property that is surrendered under section 17 of the Act:
  - (a) may make the property available for inspection by the police, if of the opinion that it may constitute evidence of an offence, or
  - (b) may direct that the property be destroyed, if of the opinion that it may constitute a threat to public health.

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### **[4] Clause 10 Segregation of detainees for protection**

Insert at the end of the clause:

- (2) If, pursuant to an approval referred to in section 19 (1) (b) of the Act, a detainee is segregated for more than 24 hours, the centre manager must ensure that:
  - (a) notice of that fact is given promptly to the Ombudsman, and
  - (b) the segregation is carried out in accordance with a plan that is subject to monitoring by a psychologist, and
  - (c) the detainee is visited daily by a Justice Health officer, and
  - (d) if the psychologist or Justice Health officer advises the centre manager that the detainee appears to be at risk of self-harm, the detainee is checked on by a juvenile justice officer at intervals of no more than 10 minutes.

### **[5] Clause 12A**

Insert after clause 12:

#### **12A Radios and other electronic equipment**

- (1) A detainee may acquire:
  - (a) any radio or other item of electronic equipment, and
  - (b) any compact disc or other accessory for any such equipment,approved by the centre manager.
- (2) Any such item of electronic equipment or accessory 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 item or accessory.

### **[6] Clause 15 Records to be kept concerning property**

Insert “or visitor” after “property of a detainee”.

### **[7] Clause 17 Access to programs**

Insert after clause 17 (1) (e):

- (f) programs to assist detainees to address the offences for which they are detained.

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**[8] Clause 17 (4)**

Insert “and priority to those detainees who are at greatest risk of re-offending” after “disability”.

**[9] Part 2A**

Insert after Part 2:

**Part 2A Case management**

**18A Case plans to be prepared for all detainees** (cf clause 12 of Crimes (Administration of Sentences) Regulation 2001)

- (1) A case plan is to be prepared for each detainee in a detention centre as soon as practicable after the detainee is admitted into the detention centre and is to be periodically reviewed so as to ensure that it remains relevant to the detainee’s circumstances.
- (2) The procedure for preparing and adopting a case plan is as set out in this Part.

**18B Contents of case plan** (cf clause 13 of Crimes (Administration of Sentences) Regulation 2001)

- (1) A detainee’s case plan may deal with any matter relating to the management of the detainee, including:
  - (a) the provision of services and programs in which the detainee should be encouraged to participate, and
  - (b) the provision of health care services to the detainee, and
  - (c) in the case of a detainee who appears to be at risk of self-harm, the preparation of a strategy to minimise the likelihood of self-harm occurring, and
  - (d) in the case of a detainee who has a disability, the preparation of a strategy to minimise any disadvantage suffered by the detainee on account of the disability, particularly in relation to the detainee’s suitability to engage in education or to carry out work, and
  - (e) in the case of a detainee who is an Aboriginal person or Torres Strait Islander, the preparation of a strategy to accommodate his or her cultural needs, and
  - (f) the provision of such pre-release and post-release assistance to the detainee as is relevant to his or her circumstances.

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- (2) In preparing a detainee's case plan, regard is to be had to the following matters:
  - (a) the sentencing court's comments in relation to the detainee,
  - (b) any assessment that has been made as to the detainee's physical or mental health,
  - (c) the detainee's history.

### **18C Linguistic and cultural factors to be considered** (cf clause 21 of Crimes (Administration of Sentences) Regulation 2001)

- (1) On becoming aware that a detainee who is being interviewed for the purposes of this Part may be disadvantaged by linguistic or cultural factors, an interviewer must take all reasonable steps to ensure that the detainee has the assistance of a person who can act as an appropriate interpreter or cultural representative.
- (2) Such a person need not be present at the interview so long as he or she is available to the detainee by telephone during the interview.
- (3) If the interviewer makes a report that assesses a detainee for the purposes of this Part, the interviewer:
  - (a) must take into consideration any linguistic or cultural factors that may disadvantage the detainee, and
  - (b) must refer in the report to the extent to which, in the interviewer's opinion, those factors are significant in relation to the assessment.

### **18D Detainee may participate in development of case plan**

The Director-General must take all reasonable steps to enable the detainee to participate in the development of his or her case plan.

### **[10] Clause 22A**

Insert after clause 22:

#### **22A Visits by Official Visitor and Ombudsman**

A detainee may at any time be visited by any of the following:

- (a) the Official Visitor for the detention centre,
- (b) officers from the Office of the New South Wales Ombudsman.

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**[11] Clauses 25, 26, 29, 30, 33, 49, 50 and 51**

Omit “An officer” and “an officer” wherever occurring in clauses 25 (3), (4) and (5), 26 (2) and (3), 29 (1), 30 (2), 33 (1), 49 (3), 50 (1), (2) and (3) and 51 (1).

Insert instead “A juvenile justice officer” and “a juvenile justice officer”, respectively.

**[12] Clauses 27A, 27B and 27C**

Insert after clause 27:

**27A Searching of visitors**

- (1) A juvenile justice officer may require a visitor:
  - (a) to submit to an inspection and search of personal possessions, to scanning by means of an electronic scanning device and to being sniffed by a dog, and
  - (b) to empty the pockets of the visitor’s clothing, and
  - (c) to make available for inspection and search any vehicle under the visitor’s control that is on the premises of a detention centre.
- (2) Except as otherwise provided by this Regulation or as permitted by a juvenile justice officer, a visitor must, while the visit is taking place, leave anything that the visitor has brought into a detention centre in storage facilities provided for the purpose at the centre.

Maximum penalty: 5 penalty units.
- (3) A juvenile justice officer may confiscate, for the duration of the visit, anything that a visitor has brought into the detention centre but not left in storage facilities as required by subclause (2).
- (4) Subclause (3) does not limit any other power that a juvenile justice officer may have apart from this clause to seize or detain anything of the kind referred to in that subclause, such as a power to seize any such thing from a person following the person’s lawful arrest.
- (5) This clause does not apply to or in respect of any of the following persons:
  - (a) a police officer or correctional officer while acting in his or her official capacity,
  - (b) a person referred to in, or belonging to a body referred to in, clause 30 (3) (a)–(m),

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- (c) a diplomatic or consular representative of a foreign country.

### **27B Unauthorised use of cameras or recording equipment** (cf clause 96 of Crimes (Administration of Sentences) Regulation 2001)

- (1) A visitor must not take photographs of, or operate video or audio recording equipment at, a detention centre without the prior approval of the centre manager.  
Maximum penalty: 20 penalty units.
- (2) The centre manager may confiscate any photograph, film, tape or other recording taken or made by a person in contravention of this clause.
- (3) The centre manager may destroy any part of a confiscated photograph, film, tape or recording which the centre manager is satisfied is likely to prejudice the security, safety or good order of a detention centre or place anyone's personal safety at risk.
- (4) Any part of the photograph, film, tape or recording that the centre manager is satisfied is not likely to prejudice the security, safety or good order of a detention centre, or place anyone's personal safety at risk, may be returned to the person from whom it was taken.
- (5) Before returning any photograph, film, tape or recording, the centre manager may charge the person for payment of any costs incurred in processing or developing it.

### **27C Banning orders**

- (1) The Director-General may, by order in writing served on any person, ban that person:
  - (a) from visiting detention centres generally or from visiting any specified detention centre, or
  - (b) from visiting detainees generally or from visiting any specified detainee or class of detainees.
- (2) The centre manager for a detention centre may, by order in writing served on any person, ban that person:
  - (a) from visiting the detention centre, or
  - (b) from visiting detainees generally, or from visiting any specified detainee or class of detainees, in the detention centre.



- (3) An order under this clause may not be made in relation to a person except on the grounds that:
  - (a) the person has contravened a provision of the Act or this Regulation while visiting a detention centre or a detainee at a detention centre, or
  - (b) that a visit by the person to a detention centre or a detainee at a detention centre might constitute a risk to the security, safety or good order of the detention centre.
- (4) An order under this clause:
  - (a) must specify the grounds on which it is made, and
  - (b) has effect for such period (not exceeding 12 months from the day on which it is made) as is specified in the order.
- (5) Despite any other provision of this Part, a detainee may not be visited by any person with respect to whom an order under this clause has effect as regards the detention centre in which the detainee is detained.
- (6) This clause does not apply to or in respect of any of the following persons:
  - (a) a police officer or correctional officer while acting in his or her official capacity,
  - (b) a person referred to in, or belonging to a body referred to in, clause 30 (3) (a)–(m),
  - (c) a diplomatic or consular representative of a foreign country.

**[13] Clause 30 Correspondence with external bodies**

Insert at the end of clause 30 (3) (l):

or

- (m) the Official Visitor for the detention centre,

**[14] Clause 31 Telephone communications**

Omit the clause.

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### [15] Part 3, Division 2A

Insert after Division 2 of Part 3:

#### **Division 2A Telephone communications**

##### **32A Telephone communications—general**

- (1) A detainee may request the centre manager (either directly or through a juvenile justice officer employed at the detention centre) to be allowed telephone contact with:
  - (a) a juvenile justice officer (wherever employed), or
  - (b) a person referred to in, or belonging to a body referred to in, clause 30 (3) (a)–(m).
- (2) A juvenile justice officer 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.
- (4) This clause does not prevent the centre manager from authorising telephone contact with persons or bodies not referred to in this clause.

##### **32B Monitoring of telephone calls**

- (1) The Director-General may cause an officer authorised for the purpose to monitor one or more of a detainee's telephone calls.
- (2) The Director-General may determine the procedure for monitoring telephone calls.
- (3) The Director-General must ensure that procedures are in place so that both the maker and the recipient of a telephone call that is monitored are informed that the call is being monitored before the call is made or at the start of the call.

**Note.** The *Telecommunications (Interception and Access) Act 1979* of the Commonwealth prohibits the interception of a communication passing over a telecommunications system without the knowledge of the person making the communication.

- (4) Communications made during a telephone call between a detainee and any of the following persons or bodies are not to be monitored:
- (a) a person referred to in, or belonging to a body referred to in, clause 30 (3) (a)–(m),
  - (b) the detainee’s barrister or solicitor,
  - (c) the Health Care Complaints Commission,
  - (d) the Mental Health Helpline,
  - (e) the Oral Health Hotline.
- (5) In this clause, *monitor* means listen to or record communications made during a telephone call.

**32C Termination of telephone calls** (cf clause 112 of Crimes (Administration of Sentences) Regulation 2001)

- (1) A juvenile justice officer may terminate a detainee’s telephone call if of the opinion that the continuation of the call will prejudice security, safety or good order of any detention centre.
- (2) As soon as practicable after terminating a detainee’s telephone call, a juvenile justice officer must cause details of the reason for the termination to be recorded and reported to the centre manager.

**[16] Clauses 47 and 48**

Omit the clauses. Insert instead:

**47 Day leave**

A person subject to control may not be granted day leave under section 24 of the Act:

- (a) in the case of a detainee detained for a serious children’s indictable offence for which detention for more than 2 years has been ordered, unless there is less than 12 months left until the earliest date on which the detainee will be eligible for release on parole, and
- (b) in the case of any other detainee, unless the detainee has been in detention for more than 75 per cent of the period from the date on which the detainee was admitted to the detention centre to the earliest date on which the detainee will be eligible for release on parole.

**Note.** The granting of day leave to persons on remand is dealt with in section 23 (2) of the Act.

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### 48 Overnight leave

A person subject to control may not be granted overnight leave under section 24 of the Act:

- (a) in the case of a detainee detained for a serious children's indictable offence for which detention for more than 2 years has been ordered, unless there is less than 6 months left until the earliest date on which the detainee will be eligible for release on parole, and
- (b) in the case of any other detainee, unless the detainee has been in detention for more than 85 per cent of the period from the date on which the detainee was admitted to the detention centre to the earliest date on which the detainee will be eligible for release on parole.

**Note.** The granting of overnight leave to persons on remand is dealt with in section 23 (2) of the Act.

### [17] Part 6, Division 1, heading

Insert after the heading to Part 6:

#### Division 1 Order generally

### [18] Part 6, Division 2

Insert after clause 51:

#### Division 2 Testing for alcohol or drugs

##### 51A Breath testing (cf clause 146 of Crimes (Administration of Sentences) Regulation 2001)

On forming a suspicion that a detainee has recently consumed or is under the influence of alcohol or any other intoxicating substance, a juvenile justice officer or other person having supervision of the detainee may require the detainee to undergo a breath test.

##### 51B Evidence as to presence of alcohol or intoxicating substance (cf clause 147 of Crimes (Administration of Sentences) Regulation 2001)

- (1) In any proceedings for misbehaviour that are being dealt with by the centre manager, being proceedings in which it is alleged that a detainee has consumed alcohol or any other intoxicating substance, a certificate signed by a juvenile justice officer to the effect that:
  - (a) a detainee named in the certificate submitted to a breath test, and

- (b) the breath test was given on the day and completed at the time stated in the certificate, and
  - (c) there was a measurable quantity of alcohol or any other intoxicating substance present in the detainee's blood, as determined by the breath test, on the date and at the time stated in the certificate,
- is admissible in evidence of the facts so certified.

- (2) In any such proceedings, evidence of:
  - (a) the condition of the device by means of which the breath test was carried out, or
  - (b) the manner in which the breath test was carried out,
 is not required unless evidence that the device was not in proper condition or that the test was not properly carried out has been adduced.

**51C Urine sample where drug use suspected** (cf clause 148 of Crimes (Administration of Sentences) Regulation 2001)

- (1) On forming a suspicion that a detainee:
  - (a) has been administered (whether by himself or herself or otherwise) with a drug, or
  - (b) is under the influence of a drug,
 a juvenile justice officer may require the detainee to supply a sample of urine for testing and give directions as to how the sample is to be supplied.
- (2) The directions may require the detainee to comply with directions given by a juvenile justice officer as to how the sample is to be supplied.
- (3) A urine test must be carried out by a government analyst.
- (4) In any proceedings for misbehaviour that are being dealt with by the centre manager, being proceedings in which it is alleged that a requirement was made under subclause (1), a certificate signed by a juvenile justice officer to the effect that such a requirement was made:
  - (a) for a specified detainee, or
  - (b) for all detainees of a specified class,
 is admissible in evidence of the facts so certified.

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**51D Urine sample whether or not drug use suspected** (cf clause 149 of Crimes (Administration of Sentences) Regulation 2001)

- (1) A juvenile justice officer may require a detainee to supply for testing a sample of urine and give directions as to how the sample is to be supplied.
- (2) The directions may require the detainee to comply with directions given by a juvenile justice officer as to how the sample is to be supplied.
- (3) A urine test must be carried out by a government analyst.
- (4) A sample may be required under this clause and tested for the presence of a drug even though the detainee concerned may not be reasonably suspected of having administered a drug to himself or herself or of being under the influence of a drug.

**51E Evidence as to use of drugs** (cf clause 150 of Crimes (Administration of Sentences) Regulation 2001)

- (1) In any proceedings for misbehaviour that are being dealt with by the centre manager, being proceedings in which it is alleged that a detainee has been under the influence of a drug or that a drug has been present in the detainee's urine, a certificate signed by a juvenile justice officer to the effect that:
  - (a) the juvenile justice officer received a sample of urine obtained in a specified manner, or
  - (b) the juvenile justice officer arranged for the sample to be submitted for analysis by a government analyst to determine the presence of any drugs in the detainee's body or urine, or
  - (c) the container was sealed, and marked or labelled, in a specified manner,is admissible in evidence of the facts so certified.
- (2) In any such proceedings, a certificate signed by a government analyst to the effect that, on a specified day:
  - (a) the analyst received for analysis a container holding a sample of urine, or
  - (b) the container, when received, was sealed with an unbroken seal, and was marked or labelled in a specified manner, or
  - (c) the analyst carried out an analysis of the sample to determine the presence of drugs in the urine, or
  - (d) the analyst determined that a specified drug was present or was present to a specified extent in the urine, or

(e) the analyst was, at the time of the analysis, a government analyst,  
is admissible in evidence of the facts so certified.

(3) In any such proceedings:

- (a) evidence that a government analyst received a container holding a sample of urine, being a container that was marked or labelled to indicate that it held a sample of urine obtained from a specified detainee on a specified day, is evidence that the sample was a sample of urine obtained from that detainee on that day, and
- (b) evidence that the container, when received, was sealed with an unbroken seal is evidence that the sample had not been tampered with before it was received by the government analyst.

**51F Supply of test results to Justice Health** (cf clause 151 of Crimes (Administration of Sentences) Regulation 2001)

The Director-General may provide results of positive urine tests to the Chief Executive Officer, Justice Health.

**[19] Clause 52**

Omit the clause. Insert instead:

**52 Declaration of conduct constituting misbehaviour**

- (1) Misbehaviour arising from an offence under section 37A of the Act or a contravention of Part 1 or 2 of Schedule 1 is declared to be *misbehaviour* for the purposes of the Act.
- (2) Misbehaviour arising from an offence under section 37A of the Act or a contravention of Part 2 of Schedule 1 is declared to be *serious misbehaviour* for the purposes of section 21 (1) (e) of the Act.

**[20] Part 7, Division 2, heading**

Omit “**Minor misbehaviour**”.

Insert instead “**Misbehaviour dealt with otherwise than by the Children’s Court**”.

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**[21] Clause 55A**

Insert before clause 56:

**55A Application of Division**

This Division applies to misbehaviour that is dealt with otherwise than by the Children's Court.

**[22] Clause 56 Allegations of misbehaviour**

Omit "minor".

**[23] Clause 60**

Omit the clause. Insert instead:

**60 Procedure after not guilty plea**

- (1) If the detainee denies his or her guilt, the detainee must be given an opportunity to make a statement to the centre manager in relation to the allegation.
- (2) The centre manager may question the detainee and any other person the centre manager sees fit to question.
- (3) If the detainee, or any other person who is to make a statement on the detainee's behalf, cannot speak English to an extent that is sufficient for the purposes of the inquiry, the centre manager must postpone the inquiry until the services of an interpreter can be obtained.

**[24] Clause 61 Procedure generally**

Omit "hear and determine" from clause 61 (3). Insert instead "deal with".

**[25] Clause 61 (5)**

Omit "to be present and to give evidence at". Insert instead "to participate in".

**[26] Clause 61 (7)**

Omit ", or are likely to be,".

**[27] Part 7, Division 3, heading**

Omit "Serious misbehaviour".

Insert instead "Misbehaviour dealt with by the Children's Court".



**[28] Clause 64A**

Insert before clause 65:

**64A Application of Division**

- (1) This Division applies to misbehaviour that is dealt with by the Children's Court.
- (2) Proceedings for misbehaviour are not to be commenced before the Children's Court except with the approval of the Director-General.
- (3) Subclause (2) does not apply to proceedings (not being proceedings for misbehaviour) for an offence under section 37A of the Act.

**[29] Clause 65 Allegations of misbehaviour**

Omit "serious".

**[30] Clause 66 Notice of hearing**

Omit "serious" wherever occurring.

**[31] Clause 84 Delegation of functions**

Omit "any officer of the Department of Juvenile Justice".

Insert instead "a juvenile justice officer".

**[32] Parts 8A and 8B**

Insert after Part 8:

**Part 8A Conduct of juvenile justice officers  
regarding alcohol and prohibited drugs**

**Division 1 Preliminary**

**84A Interpretation** (cf clause 249A of Crimes (Administration of Sentences) Regulation 2001)

- (1) In this Part:  
*approved counsellor* means a counsellor approved for the purposes of this Part by the Director-General.  
*AS/NZ 4308* means Australian/New Zealand Standard AS/NZS 4308:2001, *Procedures for the collection, detection and quantitation of drugs of abuse in urine*, as in force on the commencement of this Part.

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***disciplinary matter*** means any procedure of a disciplinary nature or other related proceedings relating to a contravention of a provision of this Part and includes, but is not limited to, a disciplinary matter referred to in Part 2.7 of the *Public Sector Employment and Management Act 2002*.

***non-invasive sample*** means any of the following samples of human biological material:

- (a) a sample of breath, taken by breath test, breath analysis or otherwise,
- (b) a sample of urine,
- (c) a sample of faeces,
- (d) a sample of saliva taken by buccal swab,
- (e) a sample of nail,
- (f) a sample of hair other than pubic hair,
- (g) a sample of sweat taken by swab or washing from any external part of the body other than:
  - (i) the genital or anal area or the buttocks, or
  - (ii) the breasts of a female or a transgender person who identifies as a female.

***prescribed concentration of alcohol*** means a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood.

***sample***, in relation to a non-invasive sample, includes, if the sample is divided into portions, a portion of the sample.

- (2) In this Part, a juvenile justice officer ***presents for duty*** when the officer is present at the officer's place of work and about to go on duty.
- (3) In this Part, a juvenile justice officer ***tests positive for alcohol*** if a test conducted under Division 2 of Part 4A of the Act indicates that the officer had the prescribed concentration of alcohol in his or her blood:
  - (a) when the officer presented for duty, or
  - (b) while the officer was on duty.
- (4) In this Part, a juvenile justice officer ***tests positive for prohibited drugs*** if a test conducted under Division 2 of Part 4A of the Act indicates that the officer had a prohibited drug present in any of his or her biological material:
  - (a) when the officer presented for duty, or
  - (b) while the officer was on duty.

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- (5) In this Part, a reference to a non-invasive sample does not include a reference to a sample of breath taken by breath test or breath analysis.

**84B Appointment of authorised persons** (cf clause 249B of Crimes (Administration of Sentences) Regulation 2001)

- (1) The Director-General may, by instrument in writing, appoint any person to be an authorised person for the purposes of Division 2 of Part 4A of the Act.
- (2) The Director-General may appoint as an authorised person:
- (a) a person by name, or
  - (b) a person holding office or acting in a particular position, from time to time, by reference to the title of the position.
- (3) The Director-General must furnish persons appointed under subclause (2) (a) with certificates of their appointment as authorised persons.
- (4) An authorised person appointed under subclause (2) (a) must, if requested to do so, produce the certificate of appointment to any juvenile justice officer required by the authorised person to do any thing under Division 2 of Part 4A of the Act.
- (5) The Director-General must maintain a list of the titles of the positions referred to in subclause (2) (b).
- (6) An authorised person appointed under subclause (2) (b) must, if requested to do so, furnish proof that the person holds, or is acting in, the relevant position to any juvenile justice officer required by the authorised person to do any thing under Division 2 of Part 4A of the Act. Such proof may include, but is not limited to, a Departmental identification card.

**Division 2 Obligations of juvenile justice officers**

**84C Juvenile justice officers must not have prescribed concentration of alcohol in blood** (cf clause 249D of Crimes (Administration of Sentences) Regulation 2001)

A juvenile justice officer must not have the prescribed concentration of alcohol in his or her blood:

- (a) when the officer presents for duty, or
- (b) while the officer is on duty.

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**84D Juvenile justice officers must not have prohibited drug present in biological material** (cf clause 249E of Crimes (Administration of Sentences) Regulation 2001)

A juvenile justice officer must not have a prohibited drug present in any of his or her biological material:

- (a) when the officer presents for duty, or
- (b) while the officer is on duty.

### Division 3 Testing of juvenile justice officers

**84E Testing of juvenile justice officers** (cf clause 249F of Crimes (Administration of Sentences) Regulation 2001)

- (1) A juvenile justice officer may be tested under Division 2 of Part 4A of the Act whether or not there is any suspicion that the officer has recently consumed alcohol or used a prohibited drug.
- (2) The result of any such test may be used for the purposes of any disciplinary matter.

**84F General rules for the provision or taking of certain samples** (cf clause 249G of Crimes (Administration of Sentences) Regulation 2001)

- (1) In this clause, a reference to a non-invasive sample includes a reference to a sample of breath taken by breath test or breath analysis.
- (2) An authorised person who requires a juvenile justice officer to provide, or enable to be taken, a non-invasive sample from the officer under Division 2 of Part 4A of the Act must specify the type of non-invasive sample to be provided or taken.
- (3) The non-invasive sample so provided or taken must be of the type of non-invasive sample required by the authorised person.
- (4) The juvenile justice officer may not elect which type of non-invasive sample is provided, or enabled to be taken.
- (5) A non-invasive sample provided by or taken from a juvenile justice officer under Division 2 of Part 4A of the Act:
  - (a) must be provided or taken in circumstances affording reasonable privacy to the officer, except as permitted (expressly or impliedly) by any other provision of the Act or this Regulation, and

- (b) must not be provided or taken in the presence or view of a person whose presence is not necessary for the purposes of the provision or taking of the non-invasive sample or required or permitted by another provision of the Act or this Regulation, and
  - (c) must not involve the removal of more clothing than is necessary for providing or taking the non-invasive sample, and
  - (d) must not involve more visual inspection than is necessary for providing or taking the non-invasive sample.
- (6) All non-invasive samples provided by or taken from a juvenile justice officer under Division 2 of Part 4A of the Act are to be provided or taken in a manner consistent with appropriate medical or other relevant professional standards, with due regard to the dignity and self-respect of the officer and in as seemly a manner as is consistent with the effective provision or taking of the non-invasive sample.

**84G Breath testing and breath analysis of juvenile justice officers** (cf clause 249H of Crimes (Administration of Sentences) Regulation 2001)

- (1) As soon as practicable after a juvenile justice officer has undergone a breath test under Division 2 of Part 4A of the Act, the authorised person who conducted the breath test must, if the concentration of alcohol determined by the breath test to be present in the officer's blood exceeds the prescribed concentration, deliver to the officer a statement in writing signed by the authorised person specifying:
  - (a) the concentration of alcohol determined by the breath test to be present in the officer's blood and expressed in grammes of alcohol in 100 millilitres of blood, and
  - (b) the day on which and time of the day at which the breath test was completed.
- (2) An authorised person may require a juvenile justice officer to submit to a breath analysis in accordance with the directions of the authorised person if:
  - (a) it appears to the authorised person as a result of a breath test under Division 2 of Part 4A of the Act that the prescribed concentration of alcohol may be present in the officer's blood, or

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- (b) the officer refuses or fails to undergo a breath test under Division 2 of Part 4A of the Act in accordance with the directions of the authorised person when requested to do so by the authorised person.
- (3) As soon as practicable after a juvenile justice officer has submitted to a breath analysis the authorised person operating the breath analysing instrument must deliver to the officer a statement in writing signed by the authorised person specifying:
  - (a) the concentration of alcohol determined by the analysis to be present in the officer's blood and expressed in grammes of alcohol in 100 millilitres of blood, and
  - (b) the day on which and time of the day at which the breath analysis was completed.
- (4) A juvenile justice officer who is required to undergo a breath test or submit to a breath analysis may request the authorised person making the requisition to arrange for the taking (in the presence of an authorised person) of a sample of the officer's blood for analysis, at the officer's own expense, by:
  - (a) a medical practitioner nominated by the officer, or
  - (b) a medical practitioner nominated by the authorised person at the officer's request, or
  - (c) a pathology specimen collector at a collection centre nominated by the officer, or
  - (d) a pathology specimen collector at a collection centre nominated by the authorised person at the officer's request.
- (5) The making of any such request or the taking of a sample of a juvenile justice officer's blood does not absolve the officer from the obligation imposed on the officer to undergo a breath test or submit to a breath analysis in accordance with this clause.
- (6) In this clause, *collection centre* means a pathology collection centre that is operated by, or in connection with, a pathology laboratory that is accredited by the National Association of Testing Authorities.

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**84H Restrictions on requiring breath test, breath analysis or non-invasive sample** (cf clause 249I of Crimes (Administration of Sentences) Regulation 2001)

An authorised person must not require a juvenile justice officer to undergo a test under Division 2 of Part 4A of the Act:

- (a) if the officer has been admitted to a hospital for medical treatment, unless:
  - (i) the medical practitioner who attends the officer at the hospital (or, if no medical practitioner is present to attend the officer, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures) has been notified of the intention to make the requisition, and
  - (ii) the medical practitioner or registered nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the officer, or
- (b) if it appears to the authorised person that it would (because of injuries sustained by the officer) be dangerous to the officer's medical condition if the officer complied with the requisition, or
- (c) in the case of a requirement for a test for the purpose of testing for the presence or concentration of alcohol, at any time after the expiration of 3 hours from the latest of:
  - (i) the time the officer last presented for duty, or
  - (ii) the time the officer was last involved in an incident referred to in section 37J (3) of the Act (if such an incident occurred), or
  - (iii) the time the officer last ceased to be on duty, or
- (d) in the case of a requirement for a test for the purpose of testing for the presence of a prohibited drug, at any time after the expiration of 24 hours from the latest of:
  - (i) the time the officer last presented for duty, or
  - (ii) the time the officer was last involved in an incident referred to in section 37J (3) of the Act (if such an incident occurred), or
  - (iii) the time the officer last ceased to be on duty, or
- (e) at the officer's home.

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**84I Action to be taken with respect to blood samples** (cf clause 249J of Crimes (Administration of Sentences) Regulation 2001)

- (1) A medical practitioner or registered nurse by whom a sample of a juvenile justice officer's blood is taken under Division 2 of Part 4A of the Act must:
  - (a) if the officer requests a part of the sample or if the officer is not capable of requesting a part of the sample—divide the sample into 3 approximately equal portions, and
  - (b) place the sample or each portion of the sample into a separate container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (2) Of the sealed containers:
  - (a) two containers must, as soon as reasonably practicable thereafter, be transported to an approved laboratory for analysis by a government analyst in accordance with subclause (4), and must be stored at that laboratory on behalf of the Director-General, and
  - (b) the other container:
    - (i) if the officer has requested a part of the sample, must be given to the officer, or
    - (ii) if the officer is not capable of requesting a part of the sample as referred to in subclause (1), must, as soon as reasonably practicable thereafter, be transported to the approved laboratory to which the container referred to in paragraph (a) was sent and must be stored at that laboratory on behalf of the Director-General.
- (3) If a juvenile justice officer was not capable of requesting a part of the sample as referred to in subclause (1), the officer may, within 12 months after the taking of the sample, apply to the laboratory referred to in subclause (2) for the container referred to in subclause (2) (b) (ii) to be sent, for analysis (at the officer's own expense) of the portion of the sample in that container, to a medical practitioner or laboratory nominated by the officer.
- (4) The authorised person may arrange for the analyst to:
  - (a) determine whether the sample contains alcohol, and if so, the concentration of alcohol, or
  - (b) determine whether the sample contains a prohibited drug, or



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- (c) determine whether the sample contains alcohol, and if so, the concentration of alcohol and determine whether the sample also contains a prohibited drug.

**84J Action to be taken with respect to non-invasive samples** (cf clause 249K of Crimes (Administration of Sentences) Regulation 2001)

- (1) A person who is provided with a non-invasive sample under Division 2 of Part 4A of the Act from a juvenile justice officer or who takes a non-invasive sample from a juvenile justice officer:
  - (a) if the officer requests a part of the sample or if the officer is not capable of requesting a part of the sample, must divide the sample into 3 approximately equal portions or, if the sample cannot be so divided, immediately require and immediately be provided with or take, a further sample of the same type of biological material, and
  - (b) must place each portion (or if 3 samples of the same type of biological material were provided or taken, each sample) into a container, and
  - (c) must fasten and seal each container, and
  - (d) must mark or label each container for future identification.
- (2) Of the sealed containers:
  - (a) two containers must, as soon as reasonably practicable thereafter, be transported to an approved laboratory for analysis by a government analyst in accordance with subclause (4), and must be stored at that laboratory on behalf of the Director-General, and
  - (b) the other container:
    - (i) if the officer has requested a part of the sample, must be given to the officer, or
    - (ii) if the officer is not capable of requesting a part of the sample, must, as soon as reasonably practicable thereafter, be transported to the approved laboratory to which the container referred to in paragraph (a) was sent and must be stored at that laboratory on behalf of the Director-General.
- (3) If a juvenile justice officer was not capable of requesting a part of the sample as referred to in subclause (1), the officer may, within 12 months after the taking of the sample, apply to the laboratory referred to in subclause (2) for the container referred to in subclause (2) (b) (ii) to be sent, for analysis (at the officer's own

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expense) of the sample, or the portion of the sample, in that container, to a medical practitioner or laboratory nominated by the officer.

- (4) The authorised person may arrange for the analyst:
  - (a) if the non-invasive sample was provided or taken under section 37K of the Act, to determine whether the sample indicates that the blood of the juvenile justice officer, by whom the sample was provided or from whom the sample was taken, contained alcohol, and if so, the concentration of alcohol in the blood of the officer or determine whether the sample contains a prohibited drug, or
  - (b) if the non-invasive sample was provided or taken under section 37J of the Act, to determine whether the sample contains a prohibited drug.
- (5) In the case of samples of urine, any sealed containers referred to in subclause (2) must be handled in accordance with the procedure set out in AS/NZ 4308 or any other procedure approved by the Director-General in that regard.

### **84K Analysis of samples** (cf clause 249L of Crimes (Administration of Sentences) Regulation 2001)

- (1) A government analyst to whom a portion of a sample of blood or a non-invasive sample is submitted for analysis under clause 84I or 84J may carry out an analysis in accordance with the arrangement made by the authorised person under clause 84I (4) or 84J (4), as the case may be.
- (2) The analysis must be carried out, and a report provided, in accordance with:
  - (a) AS/NZ 4308, except as provided by paragraph (b), or
  - (b) such other procedure as may be directed by the Director-General.

## **Division 4 Evidence**

### **84L Certificate evidence of concentration of alcohol in blood determined by breath test or breath analysis** (cf clause 249M of Crimes (Administration of Sentences) Regulation 2001)

- (1) For the purposes of any disciplinary matter involving a contravention of clause 84C, a certificate purporting to be signed by an authorised person and certifying that:
  - (a) the authorised person is a duly appointed authorised person, and

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- (b) the person named in the certificate underwent a breath test, and
  - (c) the breath test was carried out on the person's breath by means of a device of a type approved by the Governor for the conduct of breath tests under the *Road Transport (Safety and Traffic Management) Act 1999*, and
  - (d) the breath test was carried out on the day and completed at the time stated in the certificate, and
  - (e) a concentration of alcohol (determined by that breath test and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate, and
  - (f) a statement in writing required by clause 84G (1) was delivered in accordance with that subclause,
- is prima facie evidence of the particulars certified in and by the certificate.
- (2) For the purposes of any disciplinary matter involving a contravention of clause 84C, a certificate purporting to be signed by an authorised person and certifying that:
- (a) the authorised person is a duly appointed authorised person, and
  - (b) the person named in the certificate submitted to a breath analysis, and
  - (c) the breath analysis was carried out by a breath analysing instrument within the meaning of Division 2 of Part 4A of the Act, and
  - (d) the analysis was made on the day and completed at the time stated in the certificate, and
  - (e) a concentration of alcohol (determined by that breath analysing instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate, and
  - (f) a statement in writing required by clause 84G (3) was delivered in accordance with that subclause,
- is prima facie evidence of the particulars certified in and by the certificate.

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- (3) For the purposes of any disciplinary matter involving a contravention of clause 84C, evidence of the condition of a device by means of which a breath test was carried out or of a breath analysing instrument or the manner in which the device or instrument was operated is not to be required unless evidence that the device or instrument was not in proper condition or was not properly operated has been adduced.
- (4) For the purposes of any disciplinary matter involving a contravention of clause 84C, evidence may be given of the concentration of alcohol present in the blood of the juvenile justice officer, as determined by a device by which a breath test was carried out or by a breath analysing instrument operated by an authorised person.
- (5) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the juvenile justice officer at the time the officer presented for duty if the breath analysis was made within 3 hours after that time, unless the officer proves that the concentration of alcohol in the officer's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.
- (6) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the juvenile justice officer while the officer was on duty if the breath analysis was made:
  - (a) while the officer was on duty, or
  - (b) within 3 hours after the officer ceased to be on duty,unless the officer proves that the concentration of alcohol in the officer's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

**84M Certificate evidence of concentration of alcohol in blood other than in relation to a breath test or breath analysis** (cf clause 249N of Crimes (Administration of Sentences) Regulation 2001)

- (1) For the purposes of any disciplinary matter involving a contravention of clause 84C, a certificate purporting to be signed by a medical practitioner or registered nurse and certifying any one or more of the following matters:
  - (a) that the practitioner or nurse was a medical practitioner or registered nurse who attended a specified person at a hospital,

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- (b) that the practitioner or nurse took a sample of the person's blood or took from, or was provided with, a non-invasive sample in accordance with Division 2 of Part 4A of the Act on the day and at the time stated in the certificate,
- (c) that the practitioner or nurse dealt with the sample in accordance with Division 2 of Part 4A of the Act and this Part,
- (d) that the practitioner or nurse used equipment of a specified description in so taking and dealing with the sample,
- (e) that the container into which the sample was placed was sealed, and marked or labelled, in a specified manner,
- is prima facie evidence of the particulars certified in and by the certificate.
- (2) For the purposes of any disciplinary matter involving a contravention of clause 84C, a certificate purporting to be signed by an authorised person and certifying any one or more of the following matters:
- (a) that the authorised person received a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from the specified person and taken in accordance with Division 2 of Part 4A of the Act and this Part,
- (b) that the authorised person arranged for the portion to be submitted for analysis by a government analyst to determine whether the sample indicated that the blood of the juvenile justice officer by whom the sample was provided or from whom the sample was taken contained alcohol, and if so, the concentration of alcohol in the blood of the officer,
- (c) that the container into which the sample was placed was sealed, and marked or labelled, in a specified manner,
- is prima facie evidence of the particulars certified in and by the certificate.
- (3) For the purposes of any disciplinary matter involving a contravention of clause 84C, a certificate purporting to be signed by a government analyst and certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from the specified person in a container submitted for analysis under Division 2 of Part 4A of the Act and this Part,

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- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
  - (c) that, on receipt by the analyst of the container, the seal was unbroken,
  - (d) that the analyst carried out an analysis of the portion to determine whether the sample indicated that the blood of the juvenile justice officer by whom the sample was provided or from whom the sample was taken contained alcohol, and if so, the concentration of alcohol in the blood of the officer,
  - (e) that the concentration of alcohol in the blood of the officer determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample,
  - (f) that the analyst was, at the time of the analysis, a government analyst,
- is prima facie evidence of the matters set out in subclause (4).
- (4) A certificate under subclause (3) is prima facie evidence:
    - (a) of the particulars certified in and by the certificate, and
    - (b) that the sample was a portion of the sample of the blood of that specified person or a non-invasive sample provided by or taken from the specified person, and
    - (c) that the portion had not been tampered with before it was received by the analyst.
  - (5) For the purposes of any disciplinary matter involving a contravention of clause 84C, evidence may be given of the concentration of alcohol present in the blood or other biological material of the officer, as determined by an analysis under Division 2 of Part 4A of the Act of a portion of a sample of the officer's blood or a non-invasive sample provided by or taken from the officer, as the case may be.
  - (6) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the juvenile justice officer at the time the officer presented for duty if that sample of blood or non-invasive sample was taken within 3 hours after that time, unless the officer proves that the concentration of alcohol in the officer's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

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- (7) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the juvenile justice officer while the officer was on duty if that sample of blood or non-invasive sample was taken:
- (a) while the officer was on duty, or
  - (b) within 3 hours after the officer ceased to be on duty,
- unless the officer proves that the concentration of alcohol in the officer's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

**84N Certificate evidence of presence of a prohibited drug** (cf clause 249O of Crimes (Administration of Sentences) Regulation 2001)

- (1) For the purposes of any disciplinary matter involving a contravention of clause 84D, a certificate purporting to be signed by a medical practitioner or registered nurse and certifying any one or more of the following matters:
- (a) that the practitioner or nurse was a medical practitioner or registered nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the juvenile justice officer's blood or was provided with or took a non-invasive sample from the officer in accordance with Division 2 of Part 4A of the Act and this Part on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with clause 84I or 84J,
- is prima facie evidence of the particulars certified in and by the certificate.
- (2) For the purposes of any disciplinary matter involving a contravention of clause 84D, a certificate purporting to be signed by a person and certifying any one or more of the following matters:
- (a) that the person was provided with or took a non-invasive sample from a specified person in accordance with Division 2 of Part 4A of the Act and this Part on the day and at the time stated in the certificate,
  - (b) that the person dealt with the sample in accordance with clause 84K,
- is prima facie evidence of the particulars certified in and by the certificate.

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- (3) For the purposes of any disciplinary matter involving a contravention of clause 84D, a certificate purporting to be signed by a government analyst and certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from a specified person in a container submitted for analysis under Division 2 of Part 4A of the Act and this Part,
  - (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
  - (c) that, on receipt by the analyst of the container, the seal was unbroken,
  - (d) that the analyst carried out an analysis of the portion to determine whether any prohibited drug was present in the sample,
  - (e) that a specified prohibited drug ascertained pursuant to the analysis was present in that portion,
  - (f) that the analyst was, at the time of the analysis, a government analyst,
- is prima facie evidence of the matters set out in subclause (4).
- (4) A certificate under subclause (3) is prima facie evidence:
- (a) of the particulars certified in and by the certificate, and
  - (b) that the portion was a portion of the sample of that specified person's blood or a non-invasive sample provided by, or taken from, that specified person, and
  - (c) that the portion had not been tampered with before it was received by the analyst.
- (5) For the purposes of any disciplinary matter involving a contravention of clause 84D, evidence may be given of the presence of a prohibited drug in the blood or other biological material of the juvenile justice officer, as determined pursuant to an analysis under Division 2 of Part 4A of the Act of a portion of a sample of the person's blood or a non-invasive sample provided by or taken from the officer.
- (6) The prohibited drug the presence of which is so determined, is taken to have been present in the blood or other biological material of the juvenile justice officer when the officer presented for duty, if the sample was taken or provided within 24 hours of the time the officer last presented for duty, unless the officer proves the absence, at that time, of the drug.



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- (7) The prohibited drug the presence of which is so determined, is taken to have been present in the blood or other biological material of the juvenile justice officer while the officer was on duty if the sample was taken or provided within 24 hours of the later of:
- (a) the time the officer last was involved in an incident referred to in section 37J (3) of the Act (if such an incident occurred), or
  - (b) the officer last ceased to be on duty,
- unless the officer proves the absence, at that time, of the drug.

**84O Certificate evidence of appointment of authorised person** (cf clause 249P of Crimes (Administration of Sentences) Regulation 2001)

For the purposes of any disciplinary matter involving a contravention of a provision of this Part or in proceedings for an offence under this Part, a certificate purporting to be signed by the Director-General and certifying that the person named in the certificate was an authorised person at a particular time is prima facie evidence of the particulars certified in and by the certificate.

## Division 5 Consequences

**84P Disciplinary action** (cf clause 249Q of Crimes (Administration of Sentences) Regulation 2001)

Nothing in this Part limits any disciplinary action that may be taken under the *Public Sector Employment and Management Act 2002* in respect of a juvenile justice officer.

**84Q Refusing to comply with a requirement under Division 2 of Part 4A of the Act** (cf clause 249R of Crimes (Administration of Sentences) Regulation 2001)

- (1) A juvenile justice officer must not refuse:
- (a) to undergo a breath test, or
  - (b) to submit to a breath analysis, or
  - (c) to provide, or enable to be taken, a non-invasive sample from the juvenile justice officer, or
  - (d) to comply with any other requirement of or under Division 2 of Part 4A of the Act,
- in accordance with a direction given under Division 2 of Part 4A of the Act by an authorised person.

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- (2) This clause does not prevent a juvenile justice officer so refusing if the juvenile justice officer is unable on medical grounds to do otherwise.

**84R Double jeopardy** (cf clause 249S of Crimes (Administration of Sentences) Regulation 2001)

A juvenile justice officer is not liable to be punished or disciplined under this Division for both:

- (a) testing positive for alcohol or testing positive for a prohibited drug, and
- (b) contravening clause 84Q (1).

**84S Immediate action: juvenile justice officer relieved from duty** (cf clause 249T of Crimes (Administration of Sentences) Regulation 2001)

- (1) If a juvenile justice officer tests positive for alcohol or a juvenile justice officer tests positive for a prohibited drug, the officer, if the officer remains on duty, is to be immediately relieved of duty and is not to carry out any duty for the duration of the officer's shift.
- (2) In particular, a juvenile justice officer who is relieved from duty because of the operation of this clause is not entitled to paid sick leave for that part of the relevant shift that the officer did not work.

### Division 6 Offences

**84T Interfering with results of test** (cf clause 249AA of Crimes (Administration of Sentences) Regulation 2001)

A person who does anything to introduce, or alter the concentration of, alcohol or any prohibited drug in a juvenile justice officer's blood or other biological material, before the officer undergoes a test under Division 2 of Part 4A of the Act, is guilty of an offence if the person does so for the purpose of preventing or restricting the use of the results of the test in any disciplinary matter involving a contravention of this Part.

Maximum penalty: 20 penalty units.

**84U Interfering or tampering with, or destroying, samples** (cf clause 249AB of Crimes (Administration of Sentences) Regulation 2001)

A person must not interfere or tamper with, or destroy, a sample of blood or a non-invasive sample provided by or taken from a juvenile justice officer under Division 2 of Part 4A of the Act unless the sample is destroyed:

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- (a) by or at the direction of a government analyst in the course of or on completion of analysis, or
  - (b) in the case of a sample handed to a person on behalf of a juvenile justice officer, by or at the direction of the person, or
  - (c) after the expiration of 12 months commencing on the day on which the sample was taken or provided, or a longer period (being no more than 5 years) as directed by the Director-General in respect of the sample in a direction made before such an expiration.

Maximum penalty: 20 penalty units.

## Part 8B Justice Health matters

### 84V Examination of detainees (cf clause 250 of Crimes (Administration of Sentences) Regulation 2001)

- (1) A detainee is to be examined by a Justice Health officer as soon as practicable after being received into a detention centre.
- (2) Without limiting subclause (1), a Justice Health officer may at any time carry out an examination of a detainee (but only with the consent of the detainee) if of the opinion that it is necessary for such an examination to be carried out.

### 84W Detainees risk to self or others (cf clause 251 of Crimes (Administration of Sentences) Regulation 2001)

As soon as practicable after forming an opinion:

- (a) that the mental or physical condition of a detainee constitutes a risk to the life of the detainee or to the life, health or welfare of any other person, or
  - (b) that the life of a detainee will be at risk if the detainee continues to be detained in a detention centre, or
  - (c) that, because of illness, a detainee will not survive sentence or is totally and permanently unfit for detention centre discipline, or
  - (d) that a detainee should not, on medical grounds, be employed at work of a particular nature, or
  - (e) that a detainee's medical condition is such that the detainee is unfit to travel, or should only travel by particular means,
- a Justice Health officer must report that he or she has formed the opinion, and the grounds for the opinion, to the centre manager.

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**84X Mental illness** (cf clause 252 of Crimes (Administration of Sentences) Regulation 2001)

- (1) As soon as practicable after forming an opinion that a detainee's mental state requires monitoring, a Justice Health officer must report that he or she has formed the opinion, and the grounds for the opinion, to the centre manager.
- (2) On receiving such a report, the centre manager must cause the detainee's mental state to be monitored in such manner as is agreed between the centre manager and the Justice Health officer.

**84Y Detainee's diet, exercise and treatment** (cf clause 253 of Crimes (Administration of Sentences) Regulation 2001)

- (1) As soon as practicable after forming an opinion that a detainee's diet, exercise or other treatment should be varied or modified for reasons of health, a Justice Health officer must report that he or she has formed the opinion, and the grounds for the opinion, to the centre manager.
- (2) On receiving such a report, the centre manager must take such steps as are reasonable to carry into effect any recommendation contained in the report.
- (3) If it is impracticable to carry a recommendation into effect, the centre manager must report that fact to the Director-General and to the Chief Executive Officer, Justice Health.

**84Z Medical records** (cf clause 254 of Crimes (Administration of Sentences) Regulation 2001)

- (1) Proper medical records are to be kept in respect of each detainee, with entries as to each examination that is carried out on a detainee by a Justice Health officer.
- (2) The medical records for detainees at a detention centre are to be kept at the centre in the custody of a Justice Health officer, and their contents are not to be divulged to any person outside Justice Health (including the detainee) except in accordance with guidelines established by the Chief Executive Officer, Justice Health.
- (3) Subclause (2) does not prevent information in a detainee's medical records from being used to prepare general reports on the detainee's health for submission to the centre manager of a detention centre, and such a report must be prepared and submitted whenever the centre manager so requests.

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- (4) As soon as practicable after a detainee is transferred from one detention centre to another, the detainee's medical records are to be given into the custody of a Justice Health officer at the centre to which the detainee is transferred.
  - (5) Subclause (4) does not apply if the detainee is temporarily transferred to a police station or court cell complex.

**84AA Infectious diseases** (cf clause 256 of Crimes (Administration of Sentences) Regulation 2001)

- (1) As soon as practicable after forming an opinion that a detainee has, or appears to have, a serious infectious disease, a Justice Health officer must report that he or she has formed the opinion, and the grounds for the opinion, to the centre manager.
- (2) In the case of a report from the Chief Executive Officer, Justice Health, the centre manager must carry into effect any recommendation contained in such a report in so far as it is practicable to do so.
- (3) If it is impracticable to carry a recommendation into effect, the centre manager must report that fact to the Chief Executive Officer, Justice Health.
- (4) In this clause, *serious infectious disease* means an infectious disease that is also a notifiable disease by virtue of its inclusion in Schedule 3 to the *Public Health Act 1991*.

**84AB Death of detainees** (cf clause 257 of Crimes (Administration of Sentences) Regulation 2001)

On becoming aware that a detainee has died, a Justice Health officer must report the death to the Director-General.

**[33] Schedule 1**

Omit the Schedule. Insert instead:

**Schedule 1 Misbehaviour**

(Clauses 52 and 53)

**Part 1 Misbehaviour generally**

**1 Refusal to work or participate in activities**

A detainee must not refuse to perform any duties that he or she is required to perform or to participate in any activities in which he or she is required to participate.

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### **2 Unauthorised telephone calls**

A detainee must not make any telephone calls unless authorised to do so by a juvenile justice officer.

### **3 Lying**

A detainee must not make false or misleading statements to the centre manager or any juvenile justice officer.

### **4 Disobedience**

A detainee must not disobey any rules established for the detention centre by the centre manager or any lawful instructions given to the detainee by any member of staff of the detention centre.

### **5 Stealing**

A detainee must not steal any property.

### **6 Bad language**

A detainee must not use abusive, indecent or threatening language when speaking or writing to any other person.

### **7 Possession of unauthorised articles**

A detainee must not have in his or her possession, or give to any other person, any article or thing that is not approved property.

### **8 Possession of offensive music**

- (1) A detainee must not have in his or her possession any video or audio recording equipment on which is recorded any material that the centre manager has, by notice given to the detainee or to detainees generally, declared to be offensive material.
- (2) Subclause (1) applies to all video or audio recording equipment, including equipment whose possession by the detainee is permitted by the centre manager.

### **9 Tattooing and body piercing**

A detainee must not subject himself, herself or anyone else to tattooing or body piercing.

### **10 Smoking**

A detainee must not smoke.

**11 Unauthorised use of equipment**

A detainee must not set off any fire or other alarm at the detention centre, or use any fire fighting equipment or first aid supplies provided for the detention centre, except in an emergency or when authorised to do so by a juvenile justice officer.

**12 Unauthorised entry to prohibited areas**

A detainee must not enter or remain in any area to which entry is prohibited to the detainee unless authorised to do so by a juvenile justice officer.

**13 Subversive behaviour**

A detainee must not, by word or action, attempt to undermine the good order and discipline of the detention centre or encourage other detainees to do so.

**14 Harassment**

A detainee must not, by word or action, harass or provoke any other person.

**15 Positive returns to tests for drugs and alcohol**

A detainee is guilty of misbehaviour if he or she returns positive to any test for drugs and alcohol.

**16 Refusal to submit to searching**

A detainee must not refuse to submit to a search of his or her person or possessions.

**17 Fighting**

A detainee must not become involved in, or encourage other detainees to become involved in, any fight.

**18 Conditions of leave**

A detainee who is on leave of absence from a detention centre must not contravene any condition to which that leave is subject.

**19 Hindering drug detector dogs**

A detainee must not hinder or obstruct any drug detector dog that is being used in the detention centre.

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### **20 Refusal to submit to tests for drugs or alcohol**

A detainee must not refuse to submit to any test for the presence of drugs or alcohol.

### **21 Damage to property**

A detainee must not wilfully damage any property.

## **Part 2 Serious misbehaviour**

### **22 Mistreatment of animals**

A detainee must not mistreat any animal.

### **23 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.

### **24 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.

### **25 Concealment for purposes of escape**

A detainee must not hide, or assist any other detainee to hide, for the purpose of escape.

### **26 Unauthorised medications**

- (1) A detainee must not have in his or her possession any medication that is not approved property.
- (2) A detainee must not give any medication to any other detainee, whether or not the medication is approved property.

### **27 Mobile phones, cameras and recording equipment**

A detainee must not have in his or her possession:

- (a) any mobile phone, camera or video or audio recording equipment, or
  - (b) any charger for any such equipment,
- unless it is approved property in relation to the detainee.



**28 Attempted escapes**

A detainee must not make any attempt to escape.

**29 Indecency**

- (1) A detainee must not, by word or action, behave indecently or obscenely in the presence of any other person.
- (2) In particular, a detainee must not engage in sexual conduct towards another person in circumstances in which the other person is likely to feel offended, humiliated or intimidated.

**30 Manufacture, possession or concealment of weapons**

A detainee must not manufacture, conceal, have in his or her possession or give to any other detainee any weapon or other article that is designed to cause injury.

**31 Threatening or intimidating behaviour**

- (1) A detainee must not, by word or action, behave in a threatening or intimidating manner towards any other person.
- (2) In particular, a detainee must not threaten to damage or destroy any other person's property.

**32 Detaining person against their will**

A detainee must not detain any other person against their will.

**33 Lighting fires**

A detainee must not light any fire.

**34 Assault**

A detainee must not assault any other person.