

Children (Detention Centres) Act 1987 No 57

[1987-57]



New South Wales

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Children (Detention Centres) Act 1987 No 57



New South Wales

An Act with respect to the detention of children and other young persons who are on remand or who have been found guilty of criminal offences.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Children (Detention Centres) Act 1987*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

authorised justice means:

- (a) a Magistrate, or
- (b) a justice employed in the Local Courts Administration, Attorney General's Department.

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

child means a person who is under the age of 18 years.

Children's Court means the Children's Court of New South Wales constituted by the *Children's Court Act 1987*.

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**, or

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

Department means the Department of Juvenile Justice.

detainee means a person subject to control or a person on remand, but does not include a person who is absent from a detention centre pursuant to an order in force under section 24.

detention centre means premises the subject of an order in force under section 5 (1).

detention order means:

- (a) an order in force under section 19 of the *Children (Criminal Proceedings) Act 1987* whereby a court has directed that the whole or any part of the term of a sentence of imprisonment imposed on a person be served in a detention centre,
- (b) an order in force under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987* whereby the Children's Court, or some other court exercising the functions of the Children's Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister, or
- (c) an order in force under section 10 of this Act whereby the Minister administering the *Crimes (Administration of Sentences) Act 1999* has directed the transfer of a person who is a prisoner from a prison to a detention centre.

Director-General means the person for the time being holding office or acting as the Director-General of the Department.

misbehaviour, in relation to a detainee, means an offence under section 37A (breaching conditions of leave, failure to return etc) or any breach of the regulations that is committed by the detainee.

officer means an officer or temporary employee, within the meaning of the *Public Sector Management Act 1988*, employed in the Department.

person on remand means:

- (a) a child who is an accused person within the meaning of the *Bail Act 1978* and who has not been released on bail under that Act,
- (b) a person who is an accused person within the meaning of the *Bail Act 1978* and who has not been released on bail under that Act, being a person who is charged before the Children's Court, or

(c) a person who is an accused person within the meaning of the *Bail Act 1978* and who has not been released on bail under that Act, being a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of **detention order**.

person subject to control means a person who is the subject of a detention order, but does not include a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of **detention order**.

prison has the same meaning as **correctional centre** has in the *Crimes (Administration of Sentences) Act 1999*.

prisoner has the same meaning as **inmate** has in the *Crimes (Administration of Sentences) Act 1999*.

regulation means a regulation made under this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act a reference to the Minister administering the *Crimes (Administration of Sentences) Act 1999* includes a reference to a person authorised by that Minister to exercise the functions of that Minister under this Act.

(4) In this Act a reference to a person who is absent from a detention centre includes a reference to a person who has been removed or discharged from a detention centre pursuant to an order under section 24.

4 Objects of Act

(1) The objects of this Act are to ensure that:

- (a) persons on remand or subject to control take their places in the community as soon as possible as persons who will observe the law,
- (b) in the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved, and
- (c) satisfactory relationships are preserved or developed between persons on remand or subject to control and their families.

(2) In the administration of this Act:

- (a) the welfare and interests of persons on remand or subject to control shall be given paramount consideration, and

- (b) it shall be recognised that the punishment for an offence imposed by a court is the only punishment for that offence.

Part 2 Detention centres

5 Establishment of detention centres

- (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a detention centre for the purposes of this Act.
- (2) The regulations may prescribe different classes of detention centre for the detention of different classes of person.
- (3) While a regulation referred to in subsection (2) is in force, an order under subsection (1) shall specify the class of detention centre to which the detention centre referred to in the order shall belong.
- (4) The Minister may, by the order by which any premises are declared to be a detention centre or by a subsequent order published in the Gazette, give a name to the detention centre.

Editorial note—

For orders under this section see Gazettes No 67 of 12.4.2001, p 1881.

6 Director-General to have control and management of detention centres

The Director-General shall have the control and management of all detention centres.

7 Inspection of detention centres by officers

- (1) Each detention centre shall be inspected at least once every 3 months by an officer appointed by the Director-General for the purposes of this section.
- (2) As soon as practicable after having inspected a detention centre, the officer shall furnish a report to the Director-General on the results of the inspection.
- (3) A report shall deal with such matters as may be prescribed by the regulations and with such other matters as the officer considers appropriate to include in the report.

8 Inspection of detention centres by judges etc

Any Judge of the Supreme Court or District Court, any Magistrate and any member of the Children's Court may inspect any detention centre at any time.

8A Official Visitors

- (1) The Minister may appoint a person to be an Official Visitor for a detention centre.
- (2) A person is eligible for appointment if, in the opinion of the Minister, the person is

expert in some branch of juvenile justice and demonstrates concern for persons within the juvenile justice system. However, an officer is not eligible for appointment.

- (3) An Official Visitor holds office for such period not exceeding 2 years as is specified in the instrument of appointment and is, if otherwise qualified, eligible for re-appointment.
- (4) An Official Visitor may, as regards a detention centre for which the Official Visitor is appointed:
 - (a) enter and inspect the detention centre at any reasonable time, and
 - (b) confer privately with any person who is resident, employed or detained in the detention centre, and
 - (c) furnish to the Minister advice or reports on any matters relating to the conduct of the detention centre, and
 - (d) exercise such other functions as may be prescribed by the regulations.
- (5) A copy of any advice or report furnished to the Minister under subsection (4) (c) is to be forwarded to the Minister for School Education if the advice or report relates to any part of an educational establishment that is under the control or direction of the Minister for School Education.

Part 3 Persons on remand and persons subject to control

Division 1 Admission to detention centres

9 Persons on remand and persons subject to control to be detained in detention centres

- (1) Except as otherwise provided by this Act, persons on remand and persons subject to control shall be detained in detention centres.
- (2) While a regulation referred to in section 5 is in force, a person shall, so far as is reasonably practicable, be detained in a detention centre that is appropriate to the class of person to which that person belongs.
- (3) Notwithstanding subsection (1), a person on remand may be detained in a police station, during the period between the person's being charged with an offence and the person's first appearing before a court in or in connection with proceedings for the offence, but only if it is impracticable for the person to be detained in a detention centre during that period.
- (4) A child who is detained in a police station under subsection (3) shall, so far as is reasonably practicable, be detained separately from any adults detained there.
- (5) This section does not limit the operation of sections 28A, 28B and 28BA of this Act and

the *Crimes (Sentencing Procedure) Act 1999*.

10 Transfers from prisons to detention centres

- (1) The Minister administering the *Crimes (Administration of Sentences) Act 1999* may, by order in writing made with the consent of the Minister administering this Act, direct the transfer of a person who is under the age of 21 years, and who is a prisoner, from a prison to a detention centre, there to be detained in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be.
- (2) When a person is transferred from a prison to a detention centre:
 - (a) the person ceases to be a prisoner and becomes a person on remand or a person subject to control, as the case requires, within the meaning of this Act, and
 - (b) in the case of a person who becomes a person subject to control—the period for which the person would, immediately before the making of the order referred to in subsection (1), have been required to be detained in prison had that order not been made shall be deemed to be the period for which the person is required, under that order, to be detained in a detention centre.
- (3) The consent of the Minister is not required to an order under subsection (1) if the Minister, in the same Ministry, also administers the *Crimes (Administration of Sentences) Act 1999*.

11 Director-General to determine detention centre at which a person subject to control is to be detained

- (1) As soon as practicable after a detention order has been made with respect to a person, the Director-General shall:
 - (a) determine the detention centre in which the person is to be detained,
 - (b) endorse the order with the name and address of the detention centre so determined, and
 - (c) send a copy of the order, as so endorsed, to the centre manager of the detention centre so determined.
- (2) An order that has been endorsed in such a manner as to sufficiently describe a detention centre is not invalid merely because it has not been endorsed with the name and address of the detention centre.

12 Duly endorsed detention orders authorise conveyance and detention of persons subject to control

- (1) A detention order with respect to a person is sufficient authority for:

(a) the conveyance of the person to, and

(b) the detention of the person in,

the detention centre determined pursuant to section 11.

(2) A person subject to control shall, while being conveyed to a detention centre pursuant to a detention order, be deemed to be in lawful custody.

13 Transfers between detention centres

(1) The Director-General may, by order in writing, direct the transfer of a person on remand or a person subject to control from one detention centre to another.

(2) Sections 11 and 12 apply to an order under this section in the same way as they apply to a detention order.

Division 2 Treatment of detainees

14 Functions of the Director-General

The Director-General shall ensure that adequate arrangements exist:

(a) to maintain the physical, psychological and emotional well-being of detainees,

(b) to promote the social, cultural and educational development of detainees,

(c) to maintain discipline and good order among detainees, and

(d) to facilitate the proper control and management of detention centres.

15 Detainees to be in custody of centre manager

A detainee shall, while detained in a detention centre, be deemed to be in the custody of the centre manager of the detention centre.

16 Separation of detainees

(1) The regulations may prescribe different classes of detainee for the purposes of this section.

(2) While a regulation referred to in subsection (1) is in force, different classes of detainee shall, so far as is reasonably practicable, be detained separately from other classes of detainee in the same detention centre.

17 Private property

(1) Subject to the regulations, the centre manager of a detention centre may require a detainee:

(a) to surrender to the centre manager, or

(b) to send away from the detention centre,
any or all property that is in the possession of the detainee.

(2) Subject to the regulations, any property surrendered to the centre manager of a detention centre shall be retained by the centre manager:

(a) until the detainee is discharged from the detention centre, in which case it shall be returned to the detainee immediately before the detainee is discharged from the detention centre, or

(b) until the detainee is transferred to another detention centre or to a prison, in which case it shall be sent to the centre manager of the other detention centre or the governor of the prison, as the case requires.

(3) A record shall be kept of all property surrendered to the centre manager of the detention centre and all property sent away from the detention centre under this section.

17A Detainees not to be supplied with or allowed alcohol, tobacco or adult films

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

(2) The centre manager must not allow in a detention centre any film classified RC, X or R under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

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

18 Work to be performed by detainees

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

(a) is reasonable having regard to the detainee's age and physical and intellectual capacity, and

(b) is not hazardous to the detainee's health or safety, and

(c) avoids any conflict with the detainee's religious beliefs or educational or other training programmes, and

(d) meets the requirements of section 4 and section 14 (a) and (b).

(2) A detainee who is ordered to carry out any work or activity elsewhere than at the detention centre in which he or she is detained shall, while outside the detention centre, be deemed to be in lawful custody.

19 Segregation of detainees for protection

- (1) If the centre manager of a detention centre believes on reasonable grounds that a detainee should be segregated in order to protect the personal safety of that or any other detainee, or of any other person, the centre manager may, whether or not with the consent of the detainee, direct the segregation of the detainee, subject to the following conditions:
 - (a) the nature and duration of the segregation shall be reasonable having regard to the age, mental condition and development of the detainee,
 - (b) the duration of the segregation shall be as short as practicable but, in any case, shall not exceed 3 hours, or, with the approval of the Director-General, 6 hours, in any period of 24 hours,
 - (c) the detainee shall be provided with some means of usefully occupying himself or herself,
 - (d) the physical environment of the place where the detainee is kept segregated shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre,
 - (e) the detainee shall be so segregated that at all times he or she is visible to, and can readily communicate with, an officer.
- (2) A detainee shall not be segregated under this section by way of punishment.
- (3) The centre manager of the detention centre shall make a record containing such particulars as may be prescribed by the regulations of any segregation effected under this section and shall forward copies of the record to the detainee and to the Director-General within 24 hours of the segregation.
- (4) A detainee shall not be segregated under this section unless the centre manager of the detention centre is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.

20 Complaints of misbehaviour

- (1) A complaint that a detainee is guilty of misbehaviour shall be made to such person, and in such manner, as may be prescribed by the regulations.
- (2) Subject to subsection (3), a complaint shall be heard and determined in accordance with such procedures as may be prescribed by the regulations.
- (3) The person by whom a complaint is being heard shall observe the rules of natural justice and, without limiting the generality of those rules, shall ensure that:

- (a) reasonable notice of the substance of the complaint is given to the person to whom the complaint relates before the hearing commences,
 - (b) reasonable opportunity is given for the making of submissions by or on behalf of the person to whom the complaint relates (including submissions that challenge any allegations made in relation to that person) while the hearing is being conducted, and
 - (c) any submissions made by or on behalf of the person to whom the complaint relates are taken into consideration in any decision made by the person by whom the complaint is being heard.
- (4) The rules of evidence shall not apply to the hearing of a complaint under this section.
- (5) If the person by whom a complaint is being heard is satisfied beyond reasonable doubt that the person to whom the complaint relates is guilty of the misbehaviour alleged in the complaint, the person by whom the complaint is being heard may:
- (a) take no action on the matter, or
 - (b) punish the person to whom the complaint relates.
- (6) The person by whom a complaint is being heard shall cause a record to be made:
- (a) of any decision made by that person as to whether or not the person to whom the complaint relates is guilty of the misbehaviour alleged in the complaint,
 - (b) of any decision made by that person under subsection (5) in relation to a person found guilty of misbehaviour, and
 - (c) of any other decision made by that person as a consequence of the hearing.
- (7) Such a record shall include particulars of the facts on which the decision was based.
- (8) A copy of the record shall be given to the person to whom the complaint relates within 24 hours after the determination of the complaint.
- (9), (10) (Repealed)

21 Punishments for misbehaviour

- (1) Subject to the regulations, the following punishments may be imposed on a detainee found guilty of misbehaviour:
- (a) caution,
 - (b) restriction from participation in sport or leisure activities for a period not exceeding 4 days,
 - (c) additional duties for a period not exceeding 7 days, being duties of a constructive

nature designed to promote the welfare of detainees,

- (d) exclusion from, or confinement to, a place for a period not exceeding 3 hours or, in the case of a detainee of or over the age of 16 years, not exceeding 12 hours,
 - (e) in the case of misbehaviour declared by the regulations to be serious misbehaviour—extension, by a period that does not exceed 7 days, of the non-parole period of any detention order, or the term of any detention order without a non-parole period, to which the detainee is subject (other than a detention order whose term is cumulative and that has not commenced).
- (2) Punishment of a kind referred to in subsection (1) (d) may only be imposed on a detainee subject to the following conditions:
- (a) the detainee shall be provided with some means of usefully occupying himself or herself,
 - (b) if the punishment consists of confinement to a place, the physical environment of the place where the detainee is confined shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre,
 - (c) the detainee shall at all times be visible to, and able to communicate readily with, an officer.
- (3) A punishment must not be imposed on a detainee so as to interfere with a visit to the detainee by:
- (a) a barrister or solicitor (or such other classes of persons as may be prescribed), or
 - (b) any other person, unless the centre manager is of the opinion that the security, safety or good order of the detention centre would be adversely affected if the visit were permitted.
- (4) A punishment under subsection (1) (e) may only be imposed, in accordance with this Act and the regulations, by the Children’s Court.
- (5) A penalty under subsection (1) (e) that extends the non-parole period of a person subject to control reduces by a corresponding period the remaining balance of the term of the detention order.
- (6) A punishment under subsection (1) (e) may extend a detainee’s period of detention beyond the end of the period of detention imposed by the court or the maximum period of detention which could lawfully be imposed by the court for the offence concerned.

22 Prohibited punishments

- (1) A detainee shall not be punished by being:
 - (a) struck, cuffed, shaken or subjected to any other form of physical violence,
 - (b) dosed with medicine or any other substance,
 - (c) compelled to hold himself or herself in a constrained or fatiguing position,
 - (d) deprived of food or drink,
 - (e) denied the right to read or write letters or to make or receive telephone calls (except during any period of punishment by exclusion or confinement referred to in section 21 (1) (d)),
 - (f) subjected to treatment of a kind that could reasonably be expected to be detrimental to his or her physical, psychological or emotional well-being,
 - (g) subjected to treatment of a kind that is cruel, inhuman or degrading,
 - (h) segregated in contravention of section 19, or
 - (i) subjected to treatment of a kind forbidden by the regulations.
- (2) A detainee shall not, without reasonable excuse, be handcuffed or forcibly restrained.
- (3) A person who punishes a detainee, or causes a detainee to be punished, in a manner prohibited by subsection (1) or (2) is guilty of an offence and liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

Division 3 Miscellaneous

23 Persons on remand not to be granted leave

- (1) A person on remand may not be granted leave to be absent from a detention centre but may be permitted to be absent under section 23A.
- (2) However, the Director-General may, by order in writing, grant leave to be absent from a detention centre for a purpose specified in section 24 (1A) to any person on remand in respect of whom an appeal (including an appeal to the High Court) relating to an offence is pending.
- (3) Section 24 (1B), (4), (5) and (6) apply to such an order as if it were made under section 24 (1) (a).

23A Escorted absences

- (1) Subject to the regulations, the Director-General may, by order in writing, permit a

detainee to be absent from a detention centre:

- (a) for the purpose of attending the funeral of a close relative, or
 - (b) for the purpose of visiting a close relative who is seriously ill, or
 - (c) for any other purpose that the Director-General thinks proper.
- (2) The centre manager of the detention centre shall direct an officer to take charge of the detainee while the detainee is so absent from the detention centre.
- (3) While the detainee is so absent from a detention centre the detainee shall be regarded as being in lawful custody.
- (4) The regulations may make provision for or with respect to:
- (a) the circumstances in which an order may be made under this section, and
 - (b) the conditions to be imposed on such an order, and
 - (c) any other matter relevant to the making of such an order, including the purposes for which an order may be made.

24 Persons subject to control may be granted leave, discharged etc

- (1) Subject to the regulations the Director-General may, by order in writing:
- (a) grant a person subject to control leave to be absent from a detention centre for a purpose specified in subsection (1A),
 - (b) remove a person subject to control from a detention centre and place the person in the care of such person as may be specified in the order, or
 - (c) discharge a person subject to control from detention if the Director-General has made arrangements for the person to serve the period of detention by way of periodic detention or made suitable arrangements for the supervision of the person during the period of detention.
- (1A) The purposes for which leave may be granted under subsection (1) (a) are as follows:
- (a) attending the funeral of a close relative,
 - (b) visiting a close relative who is seriously ill,
 - (c) applying for employment or being interviewed in relation to an application for employment,
 - (d) engaging in employment of a kind specified in the order,

- (e) applying for enrolment in a course of education or vocational training or being interviewed in relation to an application for enrolment in such a course,
- (f) attending a course of education or vocational training at a place specified in the order,
- (g) any other purpose that the Director-General thinks proper, being a purpose which the Director-General considers to be directly associated with the welfare or rehabilitation of the person concerned.

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

- (a) the circumstances in which an order may be made under this section, and
- (b) the conditions to be imposed on such an order, and
- (c) any other matter relevant to the making of such an order, including the purposes for which an order may be made.

(2) An order under subsection (1) (b) or (c) may not be made in relation to a classified person.

(3) An order under subsection (1) (c) may be made in relation to a person even if the person is already the subject of an order under subsection (1) (a) or (b).

(4) An order under subsection (1) may be made subject to such conditions as the Director-General may specify in the order.

(5) Such a condition shall remain in force:

- (a) until the person to whom the order relates ceases to be a person subject to control, or
- (b) for such shorter period as the Director-General may specify in the order.

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

(7) (Repealed)

24A Conditions of leave as to non-association and place restriction

(1) The conditions of leave that may be imposed under section 24 on a person subject to control may include either or both of the following:

- (a) provisions prohibiting or restricting the person subject to control from associating with a specified person,
- (b) provisions prohibiting or restricting the person subject to control from frequenting or visiting a specified place or district.

- (2) A condition referred to in subsection (1) (a) or (b) is suspended:
 - (a) while the person subject to control is in lawful custody, and
 - (b) while the person subject to control is under the immediate supervision of a public servant employed within the Department of Juvenile Justice.
- (3) A person subject to control does not contravene a prohibition or restriction as to his or her association with a specified person:
 - (a) if the person subject to control does so in compliance with an order of a court, or
 - (b) if, having associated with the specified person unintentionally, the person subject to control immediately terminates the association.
- (4) A person subject to control does not contravene a requirement not to frequent or visit a specified place or district if the person does so in compliance with an order of a court.
- (5) In this section, **associate with** means:
 - (a) to be in company with, or
 - (b) to communicate with by any means (including post, facsimile, telephone and email).

25 Removal to hospital of detainees

- (1) A detainee may:
 - (a) by order of the Director-General, or
 - (b) in cases of emergency—by order of the centre manager of the detention centre, be removed from the detention centre to a hospital, or to some other place specified in the order, for medical treatment.
- (2) A detainee who is absent from a detention centre pursuant to an order under this section shall be deemed to be in lawful custody.
- (3) The centre manager of the detention centre from which a detainee has been removed pursuant to an order under this section may direct any officer to take charge of the detainee while the detainee is absent from the detention centre.
- (4) When:
 - (a) the medical superintendent or other person in charge of a hospital certifies that a detainee who has been removed to the hospital may be discharged from the hospital,

(b) a medical practitioner certifies that a detainee who has been removed to a place other than a hospital may be discharged from that place, or

(c) an order under this section with respect to a detainee is revoked,

the detainee shall forthwith return or, if an officer has taken charge of the detainee, be returned to the detention centre from which the detainee was removed.

(5) (Repealed)

26, 27 (Repealed)

28 Transfer of classified persons to prison

(1) If:

(a) a classified person is being detained in a detention centre, and

(b) the Minister is satisfied that the person:

(i) is not profiting from the discipline and instruction in the detention centre, or

(ii) is not, for any other reason, a suitable person for detention in a detention centre,

the Minister may, by order in writing made with the consent of the Minister administering the *Crimes (Administration of Sentences) Act 1999*, direct the transfer of the person from the detention centre to a prison, there to be detained according to law.

(2) When a person is transferred from a detention centre to a prison, the person ceases to be a person on remand or a person subject to control, as the case may be, within the meaning of this Act and becomes a prisoner.

(3) The consent of the Minister administering the *Crimes (Administration of Sentences) Act 1999* is not required to an order under subsection (1) if the Minister, in the same Ministry, also administers that Act.

28A Certain children may be remanded in prison

(1) This section applies to a child of or above the age of 16 years who is:

(a) a child (including a detainee) charged with an indictable offence, or

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

(2) In any criminal proceedings against a child to whom this section applies a court may remand the child to a prison pending the commencement of the hearing of the

proceedings or during any adjournment of the hearing, but only if:

- (a) the person by whom the proceedings were commenced or the Director-General applies for such a remand, and
 - (b) the child is not released on bail under the *Bail Act 1978*, and
 - (c) the court is of the opinion that the child is not a suitable person for detention in a detention centre.
- (3) The Children's Court may at any time on the application of the Director-General remand a child as referred to in subsection (2), subject to the requirements of paragraphs (b) and (c) of that subsection.
- (4) Section 28E makes provision for the matters to be taken into account in deciding whether a person is suitable for detention in a detention centre.

28B Certain children etc may be imprisoned

- (1) This section applies to a person of or above the age of 16 years who:
- (a) is subject to a detention order relating to an indictable offence, and
 - (b) is subject to a further detention order (being an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*) in relation to a detention centre offence (as defined in section 28C) committed while the person was a detainee in relation to the offence referred to in paragraph (a).
- (2) The Children's Court may order that a person to whom this section applies be committed to prison for the whole or any part of the period specified in that further detention order, but only if:
- (a) an application for the order is made by the Director-General or the person who commenced the proceedings which resulted in the making of that further detention order, and
 - (b) the Children's Court is of the opinion that the person is not a suitable person for detention in a detention centre.
- (3) Section 28E makes provision for the matters to be taken into account in deciding whether a person is suitable for detention in a detention centre.
- (4) On the coming into operation under section 28F of an order under this section, the detention order concerned becomes a sentence of imprisonment for a term equivalent to the period specified in the order of the Children's Court under this section.

28BA Certain persons to serve balance of detention order in prison

- (1) This section applies to a person who is sentenced to a term of imprisonment in

respect of a detention centre offence that was committed when the person was of or above the age of 18 years.

- (2) A person to whom this section applies must, after serving the term of imprisonment, serve the balance of any unexpired term of a detention order to which the person is subject in prison.
- (3) The balance of the unexpired term of a detention order to which subsection (2) relates becomes the term of a sentence of imprisonment.
- (4) Despite subsections (2) and (3), the Children's Court may, on application by a person to whom this section applies, direct that the person be returned to a detention centre for the balance of that unexpired term if it is of the opinion that the person is suitable for detention in a detention centre.
- (5) In any proceedings on an application under subsection (4), the Director-General and a person to whom this section applies are entitled:
 - (a) to appear in the proceedings and be heard, and
 - (b) to be represented by a barrister or solicitor or, by leave of the Children's Court, by an agent.
- (6) Section 28E makes provision for the matters to be taken into account in deciding whether a person is suitable for detention in a detention centre.
- (7) This section extends to a person sentenced to a term of imprisonment for a detention centre offence before the commencement of this section, but does not apply if the person has served the whole of that sentence before that commencement.

28C Meaning of "detention centre offence"

In sections 28A, 28B and 28BA, a detention centre offence is:

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

28D Review etc of sec 28B orders

- (1) An order under section 28B must be reviewed at least once a month by the Minister administering the *Crimes (Administration of Sentences) Act 1999*.
- (2) An application for the variation or revocation of an order under section 28B may be made to the Children's Court by or on behalf of:

- (a) the person to whom the order relates, or
 - (b) the Minister administering the *Crimes (Administration of Sentences) Act 1999*.
- (3) An application under subsection (2) (b) may be made only if the Minister administering this Act consents.
- (4) In any proceedings on an application under this section, the person to whom the order relates is entitled:
- (a) to appear in the proceedings and be heard, and
 - (b) to be represented by a barrister or solicitor or, by leave of the Children's Court, by an agent.

28E Consideration of suitability for detention centre

- (1) In considering (for the purposes of section 28A, 28B, 28BA or 28D) whether a person is suitable for detention in a detention centre, a court must take into account the following:
- (a) the nature of any offence which the person has committed or is charged with having committed,
 - (b) the likelihood of danger to the community should the person escape from a detention centre,
 - (c) the likelihood of danger to staff or detainees if the person is detained at the detention centre concerned,
 - (d) whether any previous behaviour of the person indicates that he or she is likely to create a serious management problem in a detention centre,
 - (e) whether suitable accommodation is available for the person in prison.
- (2) This section is not intended to prevent a court from taking into account other matters in considering the matter.

28F Consent of Minister administering *Crimes (Administration of Sentences) Act 1999* required

- (1) The remand of a child to prison under section 28A, or an order under section 28B for the committal of a person to prison, has no operation unless and until the Minister administering the *Crimes (Administration of Sentences) Act 1999* consents to it operating.
- (2) Until the remand or order operates it shall be taken to be a remand to a detention centre or remains a detention order, as appropriate.

29 Application of [Crimes \(Administration of Sentences\) Act 1999](#) to detainees

The provisions of Parts 6 and 7 of the [Crimes \(Administration of Sentences\) Act 1999](#) apply to a detainee within the meaning of this Act in the same way as they apply to an offender referred to in those provisions, and so apply as if in those provisions:

- (a) a reference to a correctional centre were a reference to a detention centre, and
- (b) a reference to the Parole Board or a member of the Parole Board were a reference to the Children's Court or a Children's Magistrate, respectively, and
- (c) a reference to the Secretary of the Parole Board were a reference to a Registrar of the Children's Court, and
- (d) a reference to the Commissioner were a reference to the Director-General of the Department of Juvenile Justice.

30 Discharge generally

- (1) A person subject to control shall be discharged from detention at the end of 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.
- (2) Subsection (1) does not authorise or require a person subject to control to be discharged from detention while any other detention order is in force in respect of the person or while the person is a person on remand.
- (3) This section does not limit the operation of the [Crimes \(Sentencing Procedure\) Act 1999](#) with respect to a person subject to control.

31 Early discharge

- (1) A person subject to control may be discharged from detention at any time during the period of 24 hours immediately preceding the time when the person's detention as a person subject to control would otherwise terminate.
- (2) A person subject to control whose detention would, but for this subsection, terminate on a Saturday, Sunday or public holiday may be discharged from detention on the last day that is not a Saturday, Sunday or public holiday.

32 Termination of detention orders

A detention order ceases to have effect:

- (a) in the case of a person who is discharged from detention pursuant to section 30 or 31—when the person is discharged,
- (b) in the case of a person who is discharged from detention by virtue of an order under section 24 (1) (c):

- (i) except as provided by subparagraph (ii)—when the person is discharged, or
- (ii) if the person is discharged subject to conditions and the order is not subsequently revoked—at the end of the period for which the person would otherwise be required, under the detention order, to be detained in a detention centre,
- (c) in the case of a person the subject of an order in force under section 19 of the *Children (Criminal Proceedings) Act 1987* whereby a court has directed that part only of a term of imprisonment imposed on the person be served in a detention centre—when the person is transferred to a prison in accordance with the order to serve the remainder of the term of imprisonment in a prison, or
- (d) in the case of a person who is transferred to a prison pursuant to section 28—when the person is so transferred.

Part 4 Offences

33 Escaping

- (1) A detainee who escapes or attempts to escape from lawful custody is guilty of an offence and liable to imprisonment for a period not exceeding 3 months.
- (2)–(4) (Repealed)

34 Helping person to escape

A person who helps a detainee in escaping or attempting to escape from lawful custody is guilty of an offence and liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

35 Rescuing persons from lawful custody

A person who, by force, rescues or attempts to rescue a detainee from lawful custody is guilty of an offence and liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

36 Permitting escapes

An officer or member of the police force who, while having the actual custody of a detainee, wilfully permits the detainee to escape from custody is guilty of an offence and liable, upon being convicted on indictment, to imprisonment for a period not exceeding 7 years.

37 Harboursing escapees

A person who knowingly harbours, maintains or employs a detainee whom the person knows to have escaped from lawful custody is guilty of an offence and liable:

- (a) upon being convicted summarily—to a penalty not exceeding 10 penalty units, or

- (b) upon being convicted on indictment—to imprisonment for a period not exceeding 3 years.

37A Breaching conditions of leave, failure to return etc

(1) A detainee who:

- (a) is granted leave of absence by order under section 24 and fails, without reasonable excuse, to comply with any condition to which the order is subject or to return to the detention centre before the leave of absence expires, or
- (b) fails, without reasonable excuse, to return to the detention centre pursuant to the requirements of section 25 (4) (relating to return from medical treatment),

is guilty of an offence and liable to imprisonment for a period not exceeding 3 months.

(2) This section does not prevent misbehaviour that is an offence against this section being dealt with as misbehaviour rather than as an offence.

37B Trafficking in alcohol, drugs or other things

A person who, without lawful authority:

- (a) brings or attempts to bring into a detention centre any alcohol, drug or other thing of any kind, or
- (b) delivers or attempts to deliver to a detainee any alcohol, drugs or other thing of any kind,

is guilty of an offence and is liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

37C Unlawful entry into detention centre or communication with detainee

A person who, without lawful authority:

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

is guilty of an offence and liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

37D Disclosure of information obtained in administration or execution of Act

A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence and liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both, unless the disclosure is made:

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

Part 5 Miscellaneous

38 Arrest of escapees etc

- (1) An officer or member of the police force may, without any authority other than that conferred by this subsection, arrest a detainee who has escaped from lawful custody.
- (2) The Director-General may make an order for the arrest of a person if satisfied that:
 - (a) an order under section 24 applicable to the person has been revoked or (in the case of an order granting leave of absence) the person failed to return to the detention centre before the leave of absence expired, and in either case the person is not at a detention centre, or
 - (b) the person failed to return to the detention centre pursuant to the requirements of section 25 (4) (relating to return from medical treatment), and the person is not at a detention centre.
- (3) If an officer or member of the police force informs an authorised justice, on oath, that a person is absent from a detention centre otherwise than in accordance with this Act, the authorised justice may issue a warrant for the arrest of the person.
- (4) An officer or member of the police force may, pursuant to an order or warrant made or issued under subsection (2) or (3), arrest the person to whom the order or warrant relates.
- (5) Upon the arrest of a person under subsection (1) or (4), the person shall be conveyed to, and delivered into the custody of, the centre manager of a detention centre, to be detained in a detention centre in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be.
- (6) Nothing in this section prevents proceedings from being taken against a person in respect of an offence under Part 4.

38A Extension of term of detention order following unlawful absence

- (1) If a person subject to control is unlawfully absent from custody during the term of the

detention order to which the person is subject:

- (a) the term of the detention order, and
- (b) if the absence occurs during a non-parole period of the term of the detention order—the non-parole period,

are, by this section, extended by the period for which the person is unlawfully absent from custody.

- (2) For the purposes of this section, a person is unlawfully absent from custody if, and only if:
 - (a) the person has escaped from lawful custody, or
 - (b) the person has failed, without reasonable excuse, to return to a detention centre before the expiry of leave of absence granted to the person by order under section 24 (1) (a), or
 - (c) the person has failed, without reasonable excuse, to return to a detention centre following the revocation of an order that authorised the person's absence from the detention centre, or
 - (d) the person has failed, without reasonable excuse, to return to a detention centre in accordance with the requirements of section 25 (4) (relating to return from medical treatment).
- (3) This section applies to an unlawful absence from custody regardless of whether the person has been charged with or found guilty of an offence in connection with the absence. The application of this section does not prevent proceedings being taken against the person for such an offence.
- (4) This section does not apply to an unlawful absence from custody in respect of which the non-parole period or term of the person's detention order is extended by or under some other provision of this Act.
- (5) For the purposes of this section, unlawful absence from custody does not include any period during which the person is in lawful custody, whether or not in relation to the detention order to which the person is subject.
- (6) The date of commencement of any other detention order (the **later detention order**) that is to be served consecutively with a detention order whose term or non-parole period is extended by this section (the **earlier detention order**) is, by this subsection, postponed:
 - (a) if the later detention order commences at the end of the non-parole period of the earlier detention order—by the period for which the non-parole period of the earlier detention order is extended, or

(b) if the later detention order commences at the expiry of the earlier detention order—by the period for which the term of the earlier detention order is extended.

(7) As soon as practicable after a person whose detention order is extended by this section is returned to a detention centre, the centre manager is to give the person:

(a) a written notice of the extension, and

(b) an explanation of the effect of the notice.

A failure to comply with this subsection does not affect the validity of the extension of the detention order.

(8) This section extends to a period of unlawful absence before the commencement of this section, but does not apply if the unlawful absence ceased, and the detainee was released on parole or discharged, before that commencement.

39 Expediting trials and appeals

(1) The centre manager of a detention centre in which any person is detained for trial or appeal shall, at the end of each month, furnish returns containing the particulars prescribed by the regulations with respect to all persons so detained as at the end of that month.

(2) Such a return shall be made:

(a) to the extent to which it relates to persons detained for trial in or appeal to the Supreme Court—to the Chief Justice of the Supreme Court,

(b) to the extent to which it relates to persons detained for trial in or appeal to the District Court—to the Chief Judge of the District Court, and

(c) to the extent to which it relates to persons detained for trial in the Children's Court—to the Senior Children's Magistrate.

(3) With respect to a person the subject of such a return made:

(a) to the Chief Justice of the Supreme Court—any Judge of that Court,

(b) to the Chief Judge of the District Court—any Judge of that Court, or

(c) to the Senior Children's Magistrate—any Children's Magistrate or any authorised Magistrate under the *Children's Court Act 1987*,

may give such directions with respect to expediting the prosecution of the trial or appeal of the person as he or she thinks fit.

39A Delegation of functions

(1) The Minister may delegate to the Director-General, or to any other person, the

exercise of any of the Minister's functions under this Act or the regulations, other than this power of delegation.

- (2) The Director-General may delegate to any person the exercise of:
 - (a) any of the functions delegated under subsection (1) to the Director-General by the Minister, or
 - (b) any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.

40 Evidentiary matters

- (1) A document that purports to be:
 - (a) an order made under this Act, or
 - (b) a copy of such an order,is admissible in any proceedings under this Act and, in the absence of evidence to the contrary, is proof of the matters referred to in the document.
- (2) In the absence of evidence to the contrary, the authority of the Minister, Director-General or an officer to exercise any function conferred or imposed on the Minister, Director-General or officer by or under this Act shall be presumed.

41 Proceedings for offences

Subject to this Act, proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

42 Attendance of persons subject to control before courts and court officers

- (1) If an appropriate person or body is satisfied that it is necessary that a detainee should attend before it, him or her for the purposes of any legal proceeding, inquest or inquiry then pending and that the absence of the detainee may prejudice the rights of a party, the person or body may make an order directing the centre manager of the detention centre in which the detainee is detained to cause the detainee to be produced at the court or other place at which the proceeding, inquest or inquiry is being held.
- (2) Such an order is sufficient authority for the centre manager to cause the detainee to be produced in accordance with the terms of the order.
- (3) A detainee produced in accordance with such an order is taken to be in lawful custody while in the actual custody of the centre manager of a detention centre, an officer or a police officer.
- (4) It is the duty of the centre manager, officer or police officer having actual custody of

the detainee to return the detainee to the detention centre from which the detainee was produced as soon as the appropriate person or body permits.

(5) In this section, **appropriate person or body** means:

- (a) a court of record, a judge of such a court or a person constituting such a court, or
- (b) the Victims Compensation Tribunal, or
- (c) a coroner, or
- (d) a Clerk of a Local Court, a Registrar of the Children's Court, a Registrar or assistant Registrar of the District Court, a Registrar or Deputy Registrar of the Supreme Court or the Registrar of the Court of Criminal Appeal, or
- (e) a person prescribed by the regulations for the purposes of this definition.

43 Royal prerogative of mercy preserved

Nothing in this Act limits or affects in any manner the Royal prerogative of mercy.

44 Saving as to functions of Sheriff

Nothing in this Act abridges or otherwise affects the functions conferred or imposed on the Sheriff by or under any Act or law in relation to persons under lawful detention.

45 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
 - (a) the control, management, good government, supervision and inspection of detention centres,
 - (b) the maintenance of the physical, psychological and emotional well-being of detainees,
 - (c) the promotion of the social, cultural and educational development of detainees, and
 - (d) the conduct and functions of persons employed in or about detention centres.
- (2) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) A regulation may create an offence punishable (except in the case of misbehaviour) by a penalty not exceeding 5 penalty units.

46 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 46)

Children (Detention Centres) Amendment Act 1988

1 Remand or transfer to prison

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

2 Orders for leave

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