

# Children (Detention Centres) Act 1987 No 57

[1987-57]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Courts and Crimes Legislation Amendment Bill 2009](#)

### Authorisation

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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) an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

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

**Chief Executive Officer, Justice Health** means the person for the time being holding office or acting as the chief executive officer of Justice Health under the *Health Services Act 1997*.

**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*.

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

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

**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 as a juvenile offender, and pursuant to which the court has committed the person to a detention centre, or
- (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* or the Commissioner of Corrective Services has directed the transfer of a juvenile inmate from a correctional centre or juvenile correctional centre, as the case may be, to a detention centre.

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

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

**Justice Health** means the statutory health corporation of that name specified in Schedule 2 to the *Health Services Act 1997*.

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

**juvenile inmate** means an inmate who is under the age of 21 years.

**juvenile justice officer** means a member of staff of the Department, and includes a

correctional officer exercising functions pursuant to section 26 (1).

**medical officer**, in relation to a detention centre, means a medical officer appointed for the detention centre as referred to in section 37G.

**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.

**older detainee** means a detainee who is of or above the age of 16 years.

**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**.

**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.
- (5) Notes included in this Act do not form part of this Act.



#### **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; No 200 of 17.12.2004, p 9387; No 86 of 8.7.2005, p 3612; No 120 of 30.9.2005, p 7905 and No 93 of 1.8.2008, p 7384.

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

The Director-General shall have the control and management of all detention centres, subject to section 26.

## **7 Inspection of detention centres by juvenile justice officer appointed by Director-General**

- (1) Each detention centre shall be inspected at least once every 12 months by a juvenile justice officer appointed by the Director-General for the purposes of this section.
- (2) As soon as practicable after having inspected a detention centre, the juvenile justice 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 juvenile justice 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, a juvenile justice 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*.

#### **9A Certain persons not to be detained in detention centres**

- (1) A person who is of or above the age of 21 years is not to be detained in a detention centre if he or she is the subject of an arrest warrant of any kind.
- (2) A person who is of or above the age of 18 years, but under the age of 21 years, is not to be detained in a detention centre if he or she is the subject of an arrest warrant or order of any of the following kinds:
  - (a) a warrant issued under section 41 of the *Children (Criminal Proceedings) Act 1987* in relation to an alleged breach of a good behaviour bond or an alleged breach of probation, or
  - (b) a warrant issued under section 23 of the *Children (Community Service Orders) Act 1987* in relation to an alleged breach of a children's community service order, or
  - (c) a warrant issued under section 98 of the *Crimes (Sentencing Procedure) Act 1999* in relation to an alleged breach of a condition of a good behaviour bond, or
  - (d) a warrant issued under section 39 of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged escape from custody, or
  - (e) a warrant issued under section 116 of the *Crimes (Administration of Sentences)*

*Act 1999* in relation to an alleged breach of a community service order, or

- (f) a warrant issued under section 172A (1) (b), 180 (1) (b) or 181 (1) (a) of the *Crimes (Administration of Sentences) Act 1999*, or
- (g) an order or warrant issued under section 38.

**Note—**

Pursuant to Part 13 of the *Crimes (Administration of Sentences) Act 1999*, persons referred to in section 9A may be detained in a correctional centre.

**10 Transfer of juvenile inmates from correctional centres 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 juvenile inmate from a correctional centre to a detention centre.
- (2) The Commissioner of Corrective Services may, by order in writing made with the consent of the Director-General, direct the transfer of a juvenile inmate from a juvenile correctional centre to a detention centre.
- (3) An order may not be made under subsection (2) in respect of a juvenile inmate unless he or she is an inmate pursuant to an order under section 28 whereby he or she has been transferred from a detention centre to a juvenile correctional centre.
- (4) When an inmate is transferred from a correctional centre to a detention centre pursuant to an order under this section:
  - (a) he or she ceases to be an inmate and becomes a person on remand or a person subject to control, as the case requires, and
  - (b) in the case of a person who becomes a person subject to control, the unexpired portion of the sentence or sentences of imprisonment to which he or she was subject when the order was made is taken to be the period for which he or she is required, under this Act, to be detained in a detention centre.

**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**

- (1) 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.
- (2) In exercising any function under this section in relation to a detainee who is a forensic patient within the meaning of the [Mental Health Act 1990](#), the Director-General must consult with, and have regard to the recommendations of, the Director-General of the Department of Health.

**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.
- (3) For the purpose of ensuring the security, safety and good order of a detention centre, the Director-General may direct that different detainees or groups of detainees be detained separately from other detainees.
- (4) While a direction referred to in subsection (3) is in force, the detainees or groups of detainees identified in the direction shall, so far as is reasonably practicable, be detained separately from other detainees in the same detention centre.
- (5) Detainees may be dealt with in accordance with this section despite anything to the contrary in the [Anti-Discrimination Act 1977](#).

## **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 correctional centre, in which case it shall be sent to the centre manager of the other detention centre or the governor of the correctional centre, 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 18+ or R 18+ 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 is to be as short as practicable and, in any case, must not exceed 3 hours except with the approval of the Director-General,
  - (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, a juvenile justice 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.
- (5) Nothing in this section limits the circumstances in which detainees may be detained separately pursuant to section 16.

## **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,
  - (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 12 hours or, in the case of a detainee of or over the age of 16 years, not exceeding 24 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).
- (1A) A detainee may not be restricted from participation in sport or leisure activities for more than 7 days at a time except with the prior approval of the Director-General, whether given generally or in relation to a particular detainee.
- (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, a juvenile justice 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 a juvenile justice 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 person who is a person subject to control pursuant to an order in force under section 10 of this Act

or section 19 (1) of the *Children (Criminal Proceedings) Act 1987*.

- (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 a juvenile justice 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 a juvenile justice officer has taken charge of the detainee, be returned to the detention centre from which the detainee was removed.

(5) (Repealed)

## **26 Use of Corrective Services staff in dealing with riots and disturbances**

(1) The Director-General may enter into a memorandum of understanding with the Commissioner of Corrective Services with respect to the handling of riots and disturbances at detention centres.

(2) In accordance with any such memorandum of understanding, the Director-General may request the Commissioner of Corrective Services for assistance in dealing with a

riot or disturbance that has arisen, or that appears to be imminent, at a detention centre.

- (3) For the purpose of dealing with a riot or disturbance at a detention centre pursuant to such a request:
- (a) the Commissioner of Corrective Services:
    - (i) has the control and management of the detention centre, and
    - (ii) has and may exercise the functions of the Director-General in relation to the detention centre, and
    - (iii) has the same functions and immunities in relation to the control of detainees at the detention centre as he or she has in relation to the control of inmates in a correctional centre, and
  - (b) any correctional officer authorised by the Commissioner of Corrective Services for the purposes of this section:
    - (i) has and may exercise the functions of a juvenile justice officer in relation to the detention centre, and
    - (ii) has the same functions and immunities in relation to the control of detainees at the detention centre as he or she has in relation to the control of inmates in a correctional centre.
- (4) In particular, dogs may be used to assist in the maintenance of good order and security in a detention centre in the same way as dogs may be used to assist in the maintenance of good order and security in a correctional centre.
- (5) As soon as practicable after good order and security have been restored at the detention centre, the Commissioner of Corrective Services must return control and management of the detention centre to the Director-General.
- (6) While the Commissioner of Corrective Services has the control and management of a detention centre, the Director-General may not exercise any function in relation to the detention centre except to the extent to which the function is delegated to the Director-General by the Commissioner.
- (7) A request under subsection (2) may relate to part only of a detention centre, in which case any reference in this section to a detention centre extends only to that part of the detention centre.
- (8) The regulations may establish transitional arrangements with respect to any transfer under this section, from the Director-General to the Commissioner of Corrective Services or from the Commissioner of Corrective Services to the Director-General, of the control and management of a detention centre.

## **27 Medical attention**

- (1) A detainee must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the detainee, of other detainees and of any other person.
- (2) A medical practitioner (whether a medical officer or not) may carry out medical treatment on a detainee without the detainee's consent if the Chief Executive Officer, Justice Health is of the opinion, having taken into account the cultural background and religious views of the detainee, that it is necessary to do so in order to save the detainee's life or to prevent serious damage to the detainee's health.
- (3) Medical treatment carried out on a detainee under this section is, for all purposes, taken to have been carried out with the detainee's consent.
- (4) Nothing in this section relieves a medical practitioner from liability in respect of the carrying out of medical treatment on a detainee, being a liability to which the medical practitioner would have been subject had the treatment been carried out with the detainee's consent.
- (5) If the Chief Executive Officer, Justice Health is not a medical practitioner, the reference to the Chief Executive Officer, Justice Health in subsection (2) is taken to be a reference to a person, designated by the Chief Executive Officer for the purposes of that subsection, who is a medical practitioner.

## **28 Transfer of older detainees from detention centres to correctional centres**

- (1) The Director-General may, by order in writing made with the consent of the Commissioner of Corrective Services, direct the transfer of an older detainee from a detention centre to a correctional centre.
  - (1A) An order may be made under subsection (1) regardless of whether or where the detainee is currently in custody.
- (2) In the case of a detainee who is under the age of 18 years, an order may not be made under subsection (1) unless:
  - (a) he or she is a person on remand or a person subject to control by reason of an order in force under section 10, or
  - (b) he or she is a person on remand in relation to a serious children's indictable offence within the meaning of the *Children (Criminal Proceedings) Act 1987*, or
  - (c) he or she is a person subject to control by reason of an order in force under section 19 of the *Children (Criminal Proceedings) Act 1987*, or
  - (d) the Director-General is satisfied that the detainee's behaviour is or has been such as warrants the making of such an order.



- (2A) In the case of a detainee who is of or above the age of 18 years, but under the age of 21 years, an order may not be made under subsection (1) unless:
- (a) the Children's Court makes an order authorising the making of such an order, or
  - (b) the detainee has been detained in a detention centre for at least 6 months and the Director-General has assessed that, having regard to all of the circumstances, it would be preferable for the detainee to be detained in a correctional centre, or
  - (c) the detainee is, or has previously been, detained as an inmate in a correctional centre (other than a juvenile correctional centre) for a period of, or periods totalling, more than 4 weeks, or
  - (d) the detainee applies to the Director-General in writing for the detainee's transfer to a correctional centre, or
  - (e) one or more of the circumstances referred to in subsection (2) applies in relation to the detainee.
- (2B) An order under subsection (1) with respect to a detainee who is under the age of 18 years may only be made for the purpose of transferring the detainee to a juvenile correctional centre.
- (2C) Subsection (2) does not apply to a detainee in respect of whom an order under subsection (1) has previously been made in relation to a current period of detention.
- (2D) Subsection (2A) does not apply to a detainee in respect of whom an order under subsection (1) has previously been made, whether in relation to a current period of detention or an earlier period of detention.
- (3) When a detainee is transferred from a detention centre to a correctional centre pursuant to an order under this section:
- (a) he or she ceases to be a detainee and becomes an inmate, and
  - (b) in the case of a detainee who, having been a person subject to control, becomes an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, the period for which he or she was required, under this Act, to be detained in a detention centre when the order was made is taken to be the unexpired portion of a sentence of imprisonment to which he or she is subject.

### **28A Certain children may be remanded in correctional centres**

- (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 correctional centre 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 committed to correctional centres**

- (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 a correctional centre 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 correctional centre**

- (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) When such a person is no longer required to serve his or her term of imprisonment in custody, the person must be kept in custody in a correctional centre:
  - (a) for the balance of any unexpired term of a detention order to which he or she is then subject, and
  - (b) for the remainder of any period of remand to which he or she is then subject or to which he or she becomes subject while in custody as referred to in paragraph (a).
- (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)-(6) (Repealed)
- (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 a correctional centre.
- (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 a correctional centre under section 28A, or an order under section 28B for the committal of a person to a correctional centre, 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**

- (1) 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 Authority or a member of the Parole Authority were a reference to the Children's Court or a Children's Magistrate, respectively, and
  - (c) a reference to the Secretary of the Parole Authority 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.
- (2) If a detainee who is being detained as a result of the revocation or suspension of a parole order by the Children's Court is transferred to a correctional centre, this section (subsection (1) (a) excluded) continues to apply in relation to the parole order as if the transferred detainee were still a detainee. Accordingly, the Children's Court is to continue to exercise the functions of the Parole Authority under Division 4 of Part 7 of the *Crimes (Administration of Sentences) Act 1999* with respect to the detainee's parole order.

### **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 correctional centre in accordance with the order to serve the remainder of the term of imprisonment in a correctional centre, or
- (d) in the case of a person who is transferred to a correctional centre pursuant to section 28—when the person is so transferred.

### **32A Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the management, control, administration, supervision and inspection of detention centres,
- (b) the procedure to be followed when admitting a detainee into a detention centre, including the procedure for accepting or refusing custody of property in a detainee's possession when the detainee is admitted,
- (c) the classification of detainees into different categories and the separation of detainees by reference to the categories into which they have been classified,
- (d) the procedure to be followed when releasing a detainee from a detention centre, including the procedure for returning property accepted from a detainee when the detainee was admitted into the detention centre,
- (e) the physical, psychological and spiritual welfare of detainees while in custody and following their release,
- (f) the expenditure of money (or money's worth) by detainees,
- (g) the circumstances in which a detainee may lawfully acquire or retain possession of property within a detention centre,
- (h) the forfeiture and disposal of a detainee's abandoned or unclaimed property (including money), or of unhygienic or otherwise dangerous property (including money) received from, or sent to, a detainee,
- (i) the seizure, forfeiture and disposal of property brought into a detention centre in

contravention of this Act, the regulations or any other law,

(j) visits to detainees, including:

(i) the days and times that visits may be allowed, and

(ii) the maximum number of persons who may visit a detainee at the same time, and

(iii) the classes of persons who may be prohibited from visiting detainees, and

(iv) the conditions that must be observed by persons intending to visit a detainee before such a visit will be allowed, and

(v) the procedures to be observed by visitors and detainees during visits,

(k) the making and receiving of telephone calls by detainees,

(l) the sending and receiving of letters and parcels by detainees, including the circumstances in which letters and parcels may be opened for inspection or confiscated,

(m) the procedures to be followed by a detainee when applying for leave of absence, and the circumstances under which such leave may be granted,

(n) the procedures to be followed by a detainee, and the facilities to be provided to a detainee, for the purpose of enabling the detainee to make a complaint to the centre manager of the detention centre or to any other person or body,

(o) the observance by detainees of religious rites and obligations,

(p) the acquisition by detainees of education and vocational training,

(q) the provision to detainees of medical, surgical and dental treatment,

(q1) the circumstances in which detainees may be confined to their rooms, and the periods for which they may be so confined,

(q2) the review of directions given by the Director-General under section 16 (3),

(r) the circumstances in which a body search may be conducted on a detainee, the procedures to be followed in conducting a body search and the persons by whom, or in whose presence, a body search is to be conducted,

(s) the circumstances in which a juvenile justice officer may use force against a detainee, and the keeping of records of the occasions on which force is so used,

(t) the equipment that may be used to restrain a detainee, and the circumstances in which, and the maximum periods for which, a detainee may be restrained by means of such equipment,

- (u) the circumstances in which a detainee may be tested for drugs or alcohol, the use of a non-invasive sample provided by, or taken from, a detainee for the purposes of a test for drugs or alcohol and the nature of the tests to be used,
- (v) analyses in connection with any such tests and the admission of certificates relating to the results of any such analyses as prima facie evidence in any proceedings for misbehaviour being dealt with under this Act,
- (w) the appointment of ministers of religion and other spiritual advisors for detention centres,
- (x) the functions of juvenile justice officers and other staff employed within a detention centre.

## **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**

A juvenile justice 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 4A Administration**

### **Division 1 Health**

#### **37E Functions of Justice Health**

Justice Health, in addition to any other functions conferred on it by or under this or any other Act or law, has the following functions:

- (a) to provide health services to detainees,
- (b) to prevent the spread of infectious diseases in, or in relation to, detention centres,
- (c) to keep medical records of detainees,
- (d) to provide advice to the Director-General on the diet, exercise, clothing, capacity to work and general hygiene of detainees.

#### **37F CEO, Justice Health, to have access to detention centres, detainees and medical records**

For the purpose of ensuring that the provisions of this Act and the regulations (in so far as they relate to the functions of Justice Health) are being complied with at a detention centre, the Chief Executive Officer, Justice Health, is to have free and unfettered access at all times to all parts of the detention centre, to all medical records held at the detention centre and to all detainees held in custody in the detention centre.

#### **37G Appointment of medical officers**

- (1) The Chief Executive Officer, Justice Health, may appoint one or more registered medical practitioners as medical officers for a detention centre.
- (2) A registered medical practitioner may be appointed as a medical officer for one or more detention centres.
- (3) A medical officer is subject to the direction and control of the Chief Executive Officer, Justice Health.

- (4) A medical officer for a detention centre is to attend the detention centre as regularly and frequently as is necessary to comply with the medical officer's statutory obligations.
- (5) The Chief Executive Officer, Justice Health is to keep such statistical records, and furnish to the Director-General such returns, as the Director-General may direct in relation to health services provided to detainees.
- (6) A person who held office as a medical officer for a detention centre immediately before the commencement of this section is taken to hold office pursuant to an appointment under this section, and the appointment may be suspended or revoked accordingly.

### **37H Delegation of functions of CEO, Justice Health**

- (1) The Chief Executive Officer, Justice Health, may delegate to any person any of the Chief Executive Officer's functions under this Act, other than this power of delegation.
- (2) Subsection (1) does not enable the Chief Executive Officer, Justice Health to delegate the right of free and unfettered access conferred on the Chief Executive Officer by section 37F.

## **Division 2 Testing of juvenile justice officers for alcohol and prohibited drugs**

### **37I Definitions**

- (1) In this Division:

**authorised person** means a person appointed in accordance with the regulations to be an authorised person for the purposes of this Division.

**breath analysing instrument** means any instrument approved by the Governor by order under the [Road Transport \(Safety and Traffic Management\) Act 1999](#) as such an instrument, that is, an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in the person's breath or blood.

**breath analysis** means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's breath or blood.

**breath test** means a test:

- (a) that is designed to indicate the concentration of alcohol in a person's breath or blood, or whether a particular concentration of alcohol is or may be present in a person's breath or blood, and
- (b) that is carried out on the person's breath by means of a device (not being a

breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the *Road Transport (Safety and Traffic Management) Act 1999*.

**hospital** means a public or private hospital, and includes any premises, institution or establishment prescribed by the regulations as a hospital for the purposes of this Division.

**prohibited drug** has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

- (2) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the *Road Transport (Safety and Traffic Management) Act 1999* applies in relation to the measurement of the concentration of alcohol in a person's breath or blood for the purposes of this Division and the regulations in the same way as it applies for the purposes of Part 2 of that Act.

### **37] Testing of juvenile justice officers for alcohol and prohibited drugs**

- (1) An authorised person may require any juvenile justice officer who is on duty, or who is present at the juvenile justice officer's place of work and about to go on duty:
- (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
  - (b) to provide, or enable to be taken, a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,
- in accordance with the directions of the authorised person and the regulations.
- (2) The selection of a juvenile justice officer for testing under subsection (1) may be conducted on a random or targeted basis and, in particular, on the basis of the results of previous testing.
- (3) Without limiting the generality of subsection (1), if an incident occurs in which a person dies or is injured while in the custody of a juvenile justice officer, an authorised person may require any juvenile justice officer involved in the incident:
- (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
  - (b) to provide, or enable to be taken, a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,
- in accordance with the directions of the authorised person and the regulations.
- (4) An authorised person may require the juvenile justice officer to remain on the premises where the test is to be conducted until the test is completed.

- (5) A requirement pursuant to subsection (3) to undergo a test or to provide a sample is to be made by the authorised person as soon as practicable after the incident occurs.

### **37K Testing where juvenile justice officer attends hospital**

- (1) If a juvenile justice officer attends or is admitted to a hospital for examination or treatment because of an incident referred to in section 37J (3), an authorised person may require the juvenile justice officer to provide, or enable to be taken, a sample of blood or a non-invasive sample from the juvenile justice officer in accordance with the directions of a medical practitioner who attends the juvenile justice officer at the hospital.
- (2) Any such medical practitioner must take the sample if informed by an authorised person that the sample is required to be taken by the practitioner, but not a sample of blood if such a sample is taken under Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* instead.
- (3) If there is no medical practitioner present to attend the juvenile justice officer at the hospital, the sample is to be taken by a registered nurse who is attending the juvenile justice officer and who is accredited by a hospital to perform the sampling procedures.
- (4) Sections 21 and 22 of the *Road Transport (Safety and Traffic Management) Act 1999* apply to any taking, or provision, of a sample of blood or a non-invasive sample under subsection (1) as if the sample were a sample of blood taken under Division 4 of Part 2 of that Act.
- (5) Any sample taken under subsection (1) is to be dealt with, and a report on the analysis of the sample is to be provided, in accordance with the regulations.
- (6) Nothing in this section or the regulations derogates from the operation of Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

### **37L Protection from liability**

- (1) A medical practitioner does not incur any civil or criminal liability in respect of anything properly and necessarily done by the practitioner in the course of taking, or being provided with, a sample of blood or a non-invasive sample from a juvenile justice officer for the purpose of its being used by an analyst to detect the presence of alcohol or any prohibited drug if the practitioner:
- (a) believed on reasonable grounds that he or she was required under this Act to take, or be provided with, the sample of blood or the non-invasive sample from the juvenile justice officer, or
- (b) was informed by an authorised person that the juvenile justice officer was a person from whom the practitioner was required under this Act to take, or be provided with, the sample of blood or the non-invasive sample.

- (2) Subsection (1) extends to a registered nurse, or any person acting under the supervision of the medical practitioner, who performs the functions of a medical practitioner under this Division in accordance with this Division or the regulations.

### **37M Regulations**

The regulations may make provision for or with respect to the following:

- (a) the appointment of authorised persons for the purposes of this Division,
- (b) the conduct of testing,
- (c) the taking of samples of blood or non-invasive samples,
- (d) the taking of a sample of blood at the choice of a juvenile justice officer for the juvenile justice officer to retain or arrange to be analysed (or both),
- (e) the provision of a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,
- (f) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
- (g) the accreditation of persons conducting analyses for the presence of prohibited drugs,
- (h) the procedure for the handling and analysis of samples of blood or non-invasive samples,
- (i) offences relating to interference with test results or the testing procedure,
- (j) the consequences of refusing to comply with a requirement of or under this Division,
- (k) the consequences for juvenile justice officers of testing positive for alcohol or prohibited drugs,
- (l) the evidentiary value and use of certificates relating to the analysis of a sample or the authorisation of persons,
- (m) the confidentiality of test results.

## **Part 5 Miscellaneous**

### **38 Arrest of escapees etc**

- (1) A juvenile justice 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 a juvenile justice 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) A juvenile justice 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.
- (7) This section is subject to section 9A.

**Note—**

Under section 9A, a person who is of or above the age of 18 years who is arrested under this section is not to be detained in a detention centre. Part 13 of the *Crimes (Administration of Sentences) Act 1999* provides that such a person may be detained in a correctional centre.

**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 a juvenile justice officer to exercise any function conferred or imposed on the Minister, Director-General or juvenile justice 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 the Local Court.

#### **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, a juvenile justice officer or a police officer.

(4) It is the duty of the centre manager, juvenile justice 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 registrar of the 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.

**42A Admission to detention centre following arrest or apprehension for breach of bail undertaking or conditions**

- (1) A child who is arrested or apprehended under section 50 (1) of the *Bail Act 1978*, and who is to be detained before being taken before a court, must be detained in a detention centre rather than being detained in a police station.
- (2) Despite subsection (1), the child may be detained in a police station before being taken before a court if it is impracticable for the child to be detained in a detention centre before being taken before the court.
- (3) A child who is detained in a police station under subsection (2) must, so far as is reasonably practicable, be detained separately from any adults detained there.
- (4) While a child is detained in a detention centre under this section, the child is taken to be a person on remand for the purposes of this Act.

**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)

#### **Part 1 Preliminary**

##### **1A Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Juvenile Offenders Legislation Amendment Act 2004*

*Children (Detention Centres) Amendment Act 2006*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

#### **Part 2 Provisions consequent on enactment of [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.

## Part 3 Provisions consequent on enactment of **Juvenile Offenders Legislation Amendment Act 2004**

### 3 Definition

In this Part, **the 2004 amending Act** means the *Juvenile Offenders Legislation Amendment Act 2004*.

### 4 Section 10 transfer orders

The substitution of section 10 by Schedule 2 [5] to the 2004 amending Act does not affect any transfer made under that section before the section was substituted.

### 5 Section 28 transfer orders

The substitution of section 28 by Schedule 2 [8] to the 2004 amending Act does not affect any transfer made under that section before the section was substituted.

### 6 Section 28BA applications

The amendment of section 28BA by Schedule 2 [12] to the 2004 amending Act does not affect any application made before that amendment, and proceedings on such an application may be continued and completed, and any decision on such an application has effect, as if that amendment had not been made.

## Part 4 Provisions consequent on enactment of **Children (Detention Centres) Amendment Act 2006**

### 7 Definition

In this Part, **the 2006 amending Act** means the *Children (Detention Centres)*

*Amendment Act 2006.*

**8 Punishments for misbehaviour: section 21**

Section 21, as in force immediately before the commencement of the amendments made to that section by the 2006 amending Act, continues to apply to misbehaviour that occurred before that commencement as if that Act had not been enacted.

**9 Transfer of older detainees to juvenile correctional centres**

Section 28, as amended by the 2006 amending Act, extends to persons who were detainees before that section was so amended.