

# Children (Detention Centres) Regulation 2010

[2010-471]



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—

- **Does not include amendments by**  
*Civil and Administrative Legislation (Repeal and Amendment) Act 2013 No 95* (not commenced — to commence on 1.1.2014)

### Authorisation

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# Children (Detention Centres) Regulation 2010



New South Wales

## Contents

<b>Part 1 Preliminary</b>	9
1 Name of Regulation	9
2 Commencement	9
3 Definitions	9
<b>Part 2 Administration</b>	12
4 General routines	12
5 Admission of detainees	13
6 Information to be given to detainees	14
7 Classification of detainees	14
8 Health and medical attention	14
9 Maintenance of physical well-being of detainees	15
10 Segregation of detainees for protection	15
11 Wearing of uniform clothing	16
12 Property	16
13 Books, newspapers, magazines and other printed material	16
14 Radios and other electronic equipment	17
15 Unauthorised possession of property	17
16 Disposal of property	17
17 Records to be kept concerning property	17
18 Education and training	18
19 Access to programs	18
20 (Repealed)	19

<b>Part 3 Case management</b>	19
21 Case plans to be prepared for all detainees	19
22 Contents of case plan	19
23 Linguistic and cultural factors to be considered	19
24 Detainee may participate in development of case plan	20
<b>Part 4 Visits and communications</b>	20
<b>Division 1 Visits</b>	20
25 Visiting days and times	20
26 Visits by relatives and friends	20
27 Visits by legal practitioners and their clerks	20
28 Visits by diplomatic or consular representatives	21
29 Visits by Official Visitor and Ombudsman	21
30 Visits to Aboriginal persons and Torres Strait Islanders	21
31 Other visits	21
32 Procedure for visits	21
33 Articles not to be conveyed between visitors and detainees	22
34 Refusal and termination of visits	22
34A Removal of face coverings by visitors	23
35 Searching of visitors	24
36 Unauthorised use of cameras or recording equipment	25
37 Banning orders	25
38 Review of decision to make banning order	26
<b>Division 2 Letters and parcels</b>	27
39 Written communication with detainees	27
40 Inspection of mail and parcels	27
41 Correspondence with exempt bodies and persons	28
42 Communication with detainees and inmates in other detention centres and correctional centres	28
<b>Division 3 Telephone communications</b>	29
43 Telephone calls generally	29
44 Monitoring of telephone calls	29

45 Termination of telephone calls.....	30
<b>Division 4 Communications with staff members.....</b>	<b>30</b>
46 Requests to speak to centre manager or other staff members .....	30
<b>Part 5 Complaints.....</b>	<b>30</b>
47 Definitions .....	30
48 Who may make a complaint .....	31
49 How complaints may be made .....	31
50 Who may deal with complaints.....	32
51 How complaints to be dealt with .....	32
52 Representation of complainants .....	33
53 Complainant to be notified of certain matters.....	33
54 Review of decision on complaint .....	34
55 Complaints registers.....	34
56 Information to be recorded in complaints register.....	34
57 Complaints guidelines .....	35
<b>Part 6 Leave .....</b>	<b>35</b>
58 Definitions .....	35
59 Matters to be taken into account before leave granted.....	36
60 Day leave .....	36
61 Overnight leave.....	37
<b>Part 7 Maintenance of order.....</b>	<b>37</b>
<b>Division 1 Order generally .....</b>	<b>37</b>
62 Definitions .....	37
63 Order generally .....	37
64 Use of dogs to assist in drug detection.....	38
65 Use of force .....	38
66 Reports on use of force.....	38
<b>Division 2 Testing for alcohol or drugs.....</b>	<b>39</b>
67 Breath testing.....	39
68 Evidence as to presence of alcohol or intoxicating substance.....	39

69 Urine sample where drug use suspected.....	40
70 Urine sample whether or not drug use suspected .....	40
71 Evidence as to use of drugs.....	40
72 Supply of test results to Justice Health .....	41
<b>Part 8 Misbehaviour.....</b>	<b>41</b>
<b>Division 1 Misbehaviour generally .....</b>	<b>41</b>
73 Punishments for misbehaviour .....	41
74 Misbehaviour .....	42
75 Allegations of misbehaviour .....	42
76 Visits by prescribed persons .....	42
<b>Division 2 Misbehaviour dealt with otherwise than by the Children's Court</b>	
.....	42
77 Application of Division .....	42
78 Allegations of misbehaviour .....	42
79 Inquiry to be held .....	43
80 Adjournments .....	43
81 Procedure after guilty plea .....	43
82 Procedure after not guilty plea .....	43
83 Procedure generally.....	43
84 Misbehaviour occurring in other detention centres .....	44
85 Transfer of inquiries .....	44
86 Recording of punishment.....	44
<b>Division 3 Misbehaviour dealt with by the Children's Court .....</b>	<b>45</b>
87 Application of Division .....	45
88 Allegations of misbehaviour .....	45
89 Notice of hearing .....	45
<b>Part 9 Parole .....</b>	<b>45</b>
90 Definitions .....	45
91 Material in support of parole orders .....	46
92 Parole orders .....	46

93 Parole order to be explained to detainee.....	47
94 Standard conditions of parole.....	47
95 Supervision while on parole.....	47
96 Supervision conditions.....	48
97 Variation of conditions .....	49
98 Revocation of parole order before release.....	49
99 Intention to refuse parole .....	50
100 Decision to refuse parole following review .....	50
101 Revocation of parole order and review of revocation .....	51
102 Decision on review of revocation.....	51
103 Notice of consequential revocation of other parole orders .....	52
104 Inquiry into suspected breach of parole .....	52
105 Arrest warrants.....	52
106 Warrants of commitment.....	52
107 Delegation of functions .....	52

## **Part 10 Conduct of juvenile justice officers regarding alcohol and prohibited drugs**

.....	52
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### **Division 1 Preliminary .....**

108 Interpretation .....	53
109 Appointment of authorised persons .....	54

### **Division 2 Obligations of juvenile justice officers .....**

110 Juvenile justice officers must not have prescribed concentration of alcohol in breath or blood ....	54
111 Juvenile justice officers must not have prohibited drug present in biological material.....	55

### **Division 3 Testing of juvenile justice officers .....**

112 Testing of juvenile justice officers.....	55
113 General rules for the provision or taking of certain samples .....	55
114 Breath testing and breath analysis of juvenile justice officers.....	56
115 Restrictions on requiring breath test, breath analysis or non-invasive sample.....	57
116 Action to be taken with respect to blood samples .....	58
117 Action to be taken with respect to non-invasive samples.....	59

118 Analysis of samples .....	60
<b>Division 4 Evidence .....</b>	<b>60</b>
119 Definitions .....	60
120 Certificate evidence of concentration of alcohol in breath or blood determined by breath test or breath analysis .....	60
121 Certificate evidence of concentration of alcohol in blood other than in relation to a breath test or breath analysis .....	62
122 Certificate evidence of presence of a prohibited drug .....	64
123 Certificate evidence of appointment of authorised person.....	66
<b>Division 5 Consequences .....</b>	<b>66</b>
124 Disciplinary action .....	66
125 Refusing to comply with a requirement under Division 2 of Part 4A of the Act.....	66
126 Double jeopardy .....	67
127 Immediate action: juvenile justice officer relieved from duty.....	67
<b>Division 6 Offences.....</b>	<b>67</b>
128 Interfering with results of test .....	67
129 Interfering or tampering with, or destroying, samples .....	67
<b>Part 11 Justice Health matters .....</b>	<b>68</b>
130 Examination of detainees .....	68
131 Detainees with serious health problems.....	68
132 Mental illness.....	68
133 Detainee's diet, exercise and treatment.....	69
134 Medical records .....	69
135 Infectious diseases .....	69
136 Death of detainees .....	70
<b>Part 11A Spiritual welfare.....</b>	<b>70</b>
136A Definition.....	70
136B Religious denomination of detainees.....	70
136C Accreditation of chaplains .....	70
136D Privileges of accredited chaplains .....	71

136E Responsibilities of accredited chaplains .....	71
136F Powers of accredited chaplains.....	72
136G Non-accredited ministers of religion .....	72
136H Participation of detainees in religious observances.....	73
136I Use of chapels .....	73
136J Accredited chaplains may advise committees.....	74
136K Accredited chaplaincy services generally .....	74
136L Exclusion of ministers of religion on grounds of security .....	74
<b>Part 12 Miscellaneous .....</b>	<b>75</b>
137 Report on inspection of detention centre by officer.....	75
138 Returns relating to persons detained for trial or appeal .....	75
139 Accommodation of children in detention centres .....	75
140 Attendance at youth justice conferences .....	76
141 Savings.....	76
<b>Schedule 1 Misbehaviour.....</b>	<b>76</b>
<b>Schedule 2 Forms.....</b>	<b>79</b>



# Children (Detention Centres) Regulation 2010



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Children (Detention Centres) Regulation 2010*.

### 2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Children (Detention Centres) Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**Aboriginal person** means a person who:

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

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

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

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

**banning order** means an order made under clause 37.

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

**classified person** means:

- (a) a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of **detention order** in section 3 (1) of the Act, 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.

**Commonwealth Ombudsman** means the Commonwealth Ombudsman appointed under the [Ombudsman Act 1976](#) of the Commonwealth.

**complaints guidelines** means guidelines issued by the Director-General under clause 57.

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

**control order** means an order referred to in section 33 (1) (g) of the [Children \(Criminal Proceedings\) Act 1987](#).

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

**drug** means:

- (a) a prohibited drug or prohibited plant within the meaning of the [Drug Misuse and Trafficking Act 1985](#), or
- (b) a substance listed in Schedule 2, 3 or 4 to the Poisons List under the [Poisons and Therapeutic Goods Act 1966](#), or
- (c) any derivative of a substance referred to in paragraph (a) or (b), or
- (d) any mixture containing such a substance or derivative.

**exempt body** means any of the following:

- (a) the New South Wales Ombudsman,
- (b) the Commonwealth Ombudsman,
- (c) the Judicial Commission,
- (d) the Australian Crime Commission,
- (e) the New South Wales Crime Commission,

- (f) the Independent Commission Against Corruption,
- (g) the Anti-Discrimination Board,
- (h) the Administrative Decisions Tribunal,
- (i) the Australian Human Rights Commission,
- (j) the Privacy Commissioner,
- (k) the Legal Aid Commission of New South Wales,
- (l) the Legal Services Commissioner,
- (m) an Official Visitor,
- (n) the Inspector of Custodial Services.

**exempt person** means a member of Parliament, a legal practitioner or a police officer.

**field officer** means:

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

**government analyst** means:

- (a) an analyst within the meaning of Schedule 3 to the [Road Transport Act 2013](#), or
- (b) a person employed by the owner or operator of an approved laboratory as an analyst.

**Justice Health officer** means:

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

**legal practitioner** means an Australian legal practitioner within the meaning of the [Legal Profession Act 2004](#).

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

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

**minister of religion** means:

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

**New South Wales Ombudsman** means the Ombudsman appointed under the [Ombudsman Act 1974](#).

**Official Visitor** means an Official Visitor appointed under section 8A of the Act.

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

**the Act** means the [Children \(Detention Centres\) Act 1987](#).

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

- (a) identifies as a Torres Strait Islander, and
- (b) is accepted by the Torres Strait Islander community as a Torres Strait Islander.

**visitor** includes any person who visits a detention centre, or who visits a detainee who is detained in a detention centre, but does not include a juvenile justice officer while exercising his or her functions as a juvenile justice officer.

- (2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 2.
- (3) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Administration

### 4 General routines

- (1) The general routine for each detention centre is to be as determined by the Director-General.
- (2) The Director-General may determine different general routines for different parts of a detention centre.
- (3) The centre manager of a detention centre is to ensure that a notice setting out the

general routine for the centre:

- (a) is written in English, and in such other languages as are determined by the Director-General in relation to the centre, and
  - (b) is written in a style that, for persons speaking the language in which it is written, is easy to read and understand, and
  - (c) is exhibited in a conspicuous position where it may be read by persons who are in the detention centre or part of the detention centre to which it relates.
- (4) The languages (other than English) in which such a notice is to be written are to be determined with regard to the languages spoken in the communities from which the centre receives, or is likely to receive, detainees.
- (5) The Director-General may require the general routine for a detention centre to be published in such other manner as the Director-General thinks fit.

## **5 Admission of detainees**

- (1) A detainee must not be admitted into a detention centre otherwise than in accordance with the Act.
- (2) As soon as practicable after a detainee has been admitted into a detention centre, the centre manager must ensure that the detainee is informed of the following matters:
- (a) the general routine for the detention centre,
  - (b) the detainee's obligations as to behaviour and conduct,
  - (c) the detainee's rights as to legal representation and as to appeal,
  - (d) the procedures for seeking information and for making complaints in accordance with the complaints guidelines,
  - (e) the normal days and hours for visiting,
  - (f) any other matter about which it is necessary for the detainee to be informed so as to enable the detainee to understand the detainee's rights and obligations and to adapt to living in the centre.
- (3) If practicable, a detainee must be informed of the matters by being given a document in which information relating to each of those matters is written.
- (4) A detainee who is being admitted to a detention centre must, on being required to do so by the centre manager, produce for inspection all property in the detainee's possession.
- (5) The centre manager may exercise the centre manager's functions under section 17 of

the Act in respect of any property produced for inspection by the detainee.

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

## **6 Information to be given to detainees**

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

## **7 Classification of detainees**

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

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

## **8 Health and medical attention**

- (1) Each detainee must be supplied with such medical and dental treatment as, in the opinion of a medical officer, dental officer or registered nurse, is necessary to promote and maintain the detainee's health and well-being.
- (2) Each detainee must, as soon as practicable after being admitted to a detention centre, be subjected to an examination by a medical officer or registered nurse for the purpose of determining the detainee's state of health and the results of the examination must be recorded.
- (3) If a medical officer or registered nurse recommends to the centre manager that the employment, diet, exercise or other treatment of a detainee should be varied or modified for reasons of health, the centre manager must carry the recommendation into effect in so far as is reasonably practicable.
- (4) If it is not reasonably practicable to carry the recommendation or any part of it into effect, the centre manager must report that fact to the Director-General.

- (5) The centre manager may isolate a detainee from other detainees if:
  - (a) the detainee is suffering from an infectious medical condition, and
  - (b) there is a risk of other detainees becoming infected with that condition, and
  - (c) the condition is, in the opinion of a medical officer or a registered nurse, sufficiently serious as to require the detainee's isolation.

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

- (1) A detainee must be supplied with adequate and wholesome food.
- (2) A detainee must be afforded reasonable opportunities to participate in healthy exercise and sporting, recreational and leisure activities.

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

- (1) For the purposes of section 19 (3) of the Act, the following particulars are prescribed in relation to a detainee who is segregated:
  - (a) the detainee's name and age,
  - (b) the date and time that the segregation began and ended,
  - (c) a description of the place where the detainee was kept segregated,
  - (d) the means provided to enable the detainee to occupy himself or herself,
  - (e) the reason for which the detainee was segregated,
  - (f) the details of any approval given by the Director-General under section 19 (1) (b) of the Act,
  - (g) the name and official capacity of the person who ordered the segregation.
- (2) If, pursuant to an approval referred to in section 19 (1) (b) of the Act, a detainee is segregated for more than 24 hours, the centre manager must ensure that:
  - (a) notice of that fact is given promptly to the New South Wales Ombudsman, and
  - (b) the segregation is carried out in accordance with a plan that is subject to monitoring by a psychologist, and
  - (c) the detainee is visited daily by a Justice Health officer, and
  - (d) if the psychologist or Justice Health officer advises the centre manager that the detainee appears to be at risk of self-harm, the detainee is checked on by a juvenile justice officer at intervals of no more than 10 minutes.

## **11 Wearing of uniform clothing**

- (1) A centre manager of a detention centre may require all detainees in the centre, or a class of detainees in the centre, to wear uniform clothing and footwear issued to the detainees and not to wear any other clothing.
- (2) This clause does not apply to a detainee while attending court in person.

## **12 Property**

- (1) The centre manager may refuse to allow a detainee to use or otherwise have possession of the detainee's approved property if, in the opinion of the centre manager, the possession of the property by the detainee is a risk to security, safety or good order.
- (2) Any approved property in the possession of a detainee:
  - (a) must be kept by the detainee in a tidy and orderly manner, and
  - (b) must be used only in a manner approved by the centre manager.
- (3) Any approved property of a detainee that, in the opinion of the centre manager, is kept or used in such a manner as to be a risk to security, safety or good order may be retained by the centre manager.
- (4) Any medicine surrendered by a detainee at a detention centre may be dealt with as a medical officer directs.
- (5) Religious books, recognised objects of religious devotion and similar items belonging to a detainee are taken to be approved property and to have been acquired with the permission of the centre manager.
- (6) The property of a detainee transferred from one detention centre to another must be transferred from the custody of the centre manager of the former detention centre to the custody of the centre manager of the new detention centre, together with such inventories and records as may be directed by the Director-General.

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

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



#### **14 Radios and other electronic equipment**

- (1) A detainee may acquire:
  - (a) any radio or other item of electronic equipment approved by the centre manager, and
  - (b) any compact disc or other accessory for any such equipment approved by the centre manager.
- (2) Any such item of electronic equipment or accessory in the possession of a detainee which, in the opinion of the centre manager, is likely to adversely affect the security, safety or good order of the detention centre may be disposed of or otherwise dealt with by the centre manager in such manner as is reasonable in the circumstances, taking into account the nature of the item or accessory.

#### **15 Unauthorised possession of property**

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

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

#### **16 Disposal of property**

- (1) Any property of a detainee that is retained by the centre manager may be disposed of by the centre manager in accordance with a request made by the detainee.
- (2) Any food or articles of clothing belonging to a detainee may be destroyed if the centre manager considers it necessary for the maintenance of hygiene.
- (3) Before any property is destroyed, the centre manager must, if practicable, cause the detainee to be informed of its proposed destruction and the reason for its destruction.

#### **17 Records to be kept concerning property**

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

- (a) surrendered to, or taken and retained by, the centre manager, or
- (b) sent away by the centre manager, or
- (c) forfeited to the Crown, or
- (d) disposed of by the centre manager, or

- (e) destroyed by the centre manager, or
- (f) transferred by the centre manager to the custody of the centre manager of another detention centre, or
- (g) allowed to be retained by the detainee, or
- (h) returned to the detainee on discharge.

## **18 Education and training**

- (1) The Director-General must take all reasonable steps to ensure that each detainee under 17 years of age is provided with education at a level appropriate to the detainee's aptitude and potential, and must do so whether or not the detainee so requests.
- (2) The Director-General must take all reasonable steps to ensure that each detainee of or above the age of 17 years is provided with education or vocational training, or both, at a level appropriate to the detainee's aptitude, potential and interests.
- (3) In the exercise of a function under this clause, the Director-General must give special attention to the needs of detainees who are illiterate or who have a disability.

## **19 Access to programs**

- (1) The Director-General may provide the following programs in detention centres:
  - (a) vocational and education programs,
  - (b) psychological and social programs,
  - (c) recreational programs,
  - (d) alcohol and other drug rehabilitation programs,
  - (e) culture-specific programs,
  - (f) programs to assist detainees to address the offences for which they are detained.
- (2) The centre manager of a detention centre is to ensure that an incentive scheme is established and implemented in the centre that will encourage detainees to participate in any programs so provided.
- (3) Such an incentive scheme is to comply with any guidelines issued by the Director-General in relation to incentive schemes.
- (4) In the exercise of a function under this clause, the Director-General must give special attention to the needs of detainees who have a disability and priority to those detainees who are at greatest risk of re-offending.

## **20 (Repealed)**

## **Part 3 Case management**

### **21 Case plans to be prepared for all detainees**

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

### **22 Contents of case plan**

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

### **23 Linguistic and cultural factors to be considered**

- (1) On becoming aware that a detainee who is being interviewed for the purposes of this Part may be disadvantaged by linguistic or cultural factors, an interviewer must take

all reasonable steps to ensure that the detainee has the assistance of a person who can act as an appropriate interpreter or provide appropriate cultural guidance.

- (2) Such a person need not be present at the interview so long as he or she is available to the detainee by telephone or audio visual link during the interview.
- (3) If the interviewer makes a report that assesses a detainee for the purposes of this Part, the interviewer:
  - (a) must take into consideration any linguistic or cultural factors that may disadvantage the detainee, and
  - (b) must refer in the report to the extent to which, in the interviewer's opinion, those factors are significant in relation to the assessment.

#### **24 Detainee may participate in development of case plan**

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

### **Part 4 Visits and communications**

#### **Division 1 Visits**

##### **25 Visiting days and times**

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

##### **26 Visits by relatives and friends**

- (1) A detainee may be visited by relatives and friends at least once immediately after admission and, with the permission of the centre manager, at such intervals after that as the Director-General may determine for the centre in which the detainee is detained.
- (2) The centre manager:
  - (a) must have regard to the wishes of any parent or guardian of a detainee who is under 16 years of age in relation to the management of visits to the detainee, and
  - (b) must, at all times, seek to encourage and facilitate visits to detainees by their relatives and friends.

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

- (1) A detainee may be visited by the detainee's legal practitioner, or by a clerk authorised in writing by the detainee's legal practitioner, to discuss or transact legal business (whether civil or criminal) in which the detainee has an interest.

- (2) Visits must take place during business hours, but must not otherwise be restricted in duration or number.
- (3) The centre manager may, if of the opinion that it is convenient and practicable to do so, permit a visit to take place outside business hours.

## **28 Visits by diplomatic or consular representatives**

- (1) A detainee who is a national of a foreign country that has diplomatic or consular representation in Australia or New South Wales may be visited by a diplomatic or consular representative of the foreign country.
- (2) A detainee who is a national of a foreign country that does not have diplomatic or consular representation in Australia or New South Wales or who is a refugee or stateless person may be visited:
  - (a) by a diplomatic or consular representative of a foreign country that assumes responsibility for the detainee's interests, or
  - (b) by a representative of a national or international organisation that has as an object the protection of the interests of any such person.

## **29 Visits by Official Visitor and Ombudsman**

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

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

## **30 Visits to Aboriginal persons and Torres Strait Islanders**

A detainee who is an Aboriginal person or Torres Strait Islander may be visited by a field officer.

## **31 Other visits**

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

## **32 Procedure for visits**

- (1) The centre manager may determine the procedure to be observed by detainees and visitors during visits.
- (2) A detainee may not be visited by any person unless that person has made

arrangements with the centre manager for that purpose.

- (3) A visit to a detainee may, with the consent of the Director-General or the centre manager, take place outside the sight and hearing of a juvenile justice officer.
- (4) However, a visit to a detainee by a police officer in the course of the police officer's official duties must take place within the sight and hearing of a juvenile justice officer.
- (5) The Director-General may permit a person:
  - (a) to visit a detention centre, and
  - (b) to conduct research in the centre, and
  - (c) to be afforded facilities to interview, talk to and examine any detainee (but only with the detainee's consent) outside the sight and hearing of a juvenile justice officer.

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

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

Maximum penalty: 5 penalty units.

- (2) The centre manager, or a juvenile justice officer authorised by the centre manager for that purpose, may permit a visitor to deliver an article to a detainee or a juvenile justice officer at the detention centre for delivery to a detainee.
- (3) A person who is:
  - (a) a legal practitioner or legal practitioner's clerk, or
  - (b) a diplomatic or consular representative, or a representative of a national or international organisation, or
  - (c) a field officer, or
  - (d) a juvenile justice officer authorised to visit a detainee,may deliver to the detainee whom the person is authorised to visit any document or other thing that it is necessary to deliver for the purpose of the visit.

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

- (1) A detainee who is of or above the age of 16 years may refuse to receive a visitor.
- (2) The centre manager may, despite any other provision of this Division, refuse to permit a visit if, in the opinion of the centre manager, the security, safety or good order of

the detention centre, or the health or well-being of a detainee, is likely to be adversely affected if the visit is permitted.

- (3) The centre manager may terminate a visit to a detainee and direct the visitor to leave the detention centre if, in the opinion of the centre manager:
- (a) the visitor or detainee has, during the visit, contravened the Act, this Regulation, the general routine of the detention centre or the procedure for visits, or
  - (b) the security, safety or good order of the detention centre, or the health or well-being of a detainee, is likely to be adversely affected if the visit continues.
- (4) A visitor must not fail to comply with a direction to leave the detention centre given under this clause.

Maximum penalty: 5 penalty units.

- (5) The centre manager must cause a record to be kept of:
- (a) each refusal of a visit (whether by the detainee or the centre manager) and each termination of a visit by the centre manager, and
  - (b) the reasons for the refusal or termination.

#### **34A Removal of face coverings by visitors**

- (1) A juvenile justice officer may require a visitor to remove any face covering worn by the visitor so as to enable the visitor's face to be seen by the officer or another juvenile justice officer or person assisting in following the procedures set out in subclause (2).
- (2) A juvenile justice officer who requires a visitor to remove a face covering under this clause must, as far as is reasonably practicable, ensure that the following procedures are followed:
- (a) the juvenile justice officer must ask for the visitor's co-operation,
  - (b) the viewing of the visitor's face must be conducted:
    - (i) in a way that provides reasonable privacy for the visitor if the visitor requests privacy, and
    - (ii) as quickly as is reasonably practicable,
  - (c) the viewing of the face of a child under 12 years of age may only be conducted if a responsible person for the child is present during the viewing,
  - (d) if the visitor is 12 years old or older and requests it—the viewing of the visitor's face is to be conducted by a juvenile justice officer of the same sex as the visitor or, if a juvenile justice officer of that sex is unavailable, by another person of that

sex at the direction of a juvenile justice officer,

(e) if the visitor is a child under 12 years old and the responsible person for the child requests it—the viewing of the child’s face is to be conducted by a female juvenile justice officer or, if a female juvenile justice officer is unavailable, by another female person at the direction of a juvenile justice officer.

- (3) It is sufficient compliance with a requirement made under this clause if only so much of the face covering as prevents the visitor’s face from being seen is removed.
- (4) A juvenile justice officer may not require a visitor to remove a face covering under this clause if the visitor establishes, to the officer’s satisfaction, that the visitor has a special justification for not removing the face covering.

**Note—**

A special justification includes having a legitimate medical reason for not removing the face covering.

- (5) A visitor who does not comply with a requirement under this clause may be refused a visit to the detention centre.
- (6) In this clause:

**face** and **face covering** have the same meanings as they have in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**responsible person** for a child has the same meaning as it has in section 10 of the [Court Security Act 2005](#).

**special justification** has the same meaning as it has in section 19B of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

### 35 Searching of visitors

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

Maximum penalty: 5 penalty units.



- (3) A juvenile justice officer may confiscate, for the duration of the visit, anything that a visitor has brought into the detention centre (other than anything left in storage facilities as required by this clause).
- (4) Subclause (3) does not limit any other power that a juvenile justice officer may have apart from this clause to seize or detain anything in the possession of a person, such as a power to seize any such thing from a person following the person's lawful arrest.
- (5) This clause does not apply to or in respect of any of the following visitors:
  - (a) a police officer or correctional officer while acting in his or her official capacity,
  - (b) an officer of an exempt body,
  - (c) a diplomatic or consular representative of a foreign country.

### **36 Unauthorised use of cameras or recording equipment**

- (1) A visitor must not take photographs of, or operate video or audio recording equipment at, a detention centre without the prior approval of the centre manager.

Maximum penalty: 20 penalty units.
- (2) The centre manager may confiscate any photograph, film, tape or other recording, or delete any digital recording, taken or made by a person in contravention of this clause.
- (3) The centre manager may destroy any part of a confiscated photograph, film, tape or recording which the centre manager is satisfied is likely to prejudice the security, safety or good order of a detention centre or place anyone's personal safety at risk.
- (4) Any part of the photograph, film, tape or recording that the centre manager is satisfied is not likely to prejudice the security, safety or good order of a detention centre, or place anyone's personal safety at risk, may be returned to the person from whom it was taken.
- (5) Before returning any photograph, film, tape or recording, the centre manager may charge the person for payment of any costs incurred in processing or developing it.

### **37 Banning orders**

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

- (2) The centre manager for a detention centre may, by order in writing served on any person, ban that person:
  - (a) from visiting the detention centre, or
  - (b) from visiting detainees generally, or from visiting any specified detainee or class of detainees, in the detention centre.
- (3) An order made under this clause is a **banning order**.
- (4) A banning order may not be made in relation to a person except on the grounds that:
  - (a) the person has contravened a provision of the Act or this Regulation while visiting a detention centre or a detainee at a detention centre, or
  - (b) a visit by the person to a detention centre or a detainee at a detention centre might constitute a risk to the security, safety or good order of the detention centre.
- (5) A banning order:
  - (a) must specify the grounds on which it is made, and
  - (b) has effect for such period (not exceeding 12 months from the day on which it is made) as is specified in the order, and
  - (c) must specify that the person in respect of whom the order is made may apply to the Director-General for a review of the decision to make the order.
- (6) Despite any other provision of this Part, a detainee may not be visited by any person with respect to whom a banning order has effect in relation to the detention centre in which the detainee is detained.
- (7) This clause does not apply to or in respect of any of the following visitors:
  - (a) a police officer or correctional officer while acting in his or her official capacity,
  - (b) an officer of an exempt body,
  - (c) a diplomatic or consular representative of a foreign country.

### **38 Review of decision to make banning order**

- (1) A person in respect of whom a banning order is made may apply to the Director-General for a review of the decision to make the banning order.
- (2) The application is to be in writing and must be made within 28 days after the applicant is notified of the making of the banning order or within such further period as the Director-General may allow.

- (3) The review is to be conducted by the Director-General or a person authorised by the Director-General to conduct the review.
- (4) Following a review of the decision, the person conducting the review may:
  - (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision.
- (5) The person conducting the review must notify the applicant of the result of, and reasons for, the decision as soon as is practicable after making the decision.

## **Division 2 Letters and parcels**

### **39 Written communication with detainees**

- (1) Except as otherwise provided by this Division:
  - (a) any letter or parcel sent to or by a detainee must not be opened, read or inspected otherwise than by the person to whom the letter or parcel is addressed, and
  - (b) any letter sent to or by a detainee must not be censored.
- (2) A detainee may send letters and parcels to, and receive letters and parcels from, persons who are not detainees.

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

- (1) A letter or parcel (other than a letter to or from an exempt body or exempt person) for delivery to or dispatch from a detainee may be opened and inspected by the centre manager or a juvenile justice officer authorised by the centre manager to do so if, in the opinion of the centre manager, the security, safety or good order of the detention centre is likely to be adversely affected by the delivery or dispatch.
- (2) The centre manager may take possession of any letter or parcel and its contents and may deal with them in accordance with any directions given specifically or generally by the Director-General if, following opening and inspection, the letter or parcel is found to contain contraband or any item or matter that, in the opinion of the centre manager, is likely to adversely affect the security, safety or good order of the detention centre.
- (3) If the centre manager takes possession of a letter or parcel or its contents, the centre manager must ensure that the detainee to whom the letter or parcel is addressed is notified of that fact.

#### **41 Correspondence with exempt bodies and persons**

- (1) If a detainee delivers to a juvenile justice officer a letter addressed to an exempt body or an exempt person:
  - (a) the officer must send the letter immediately to the body or person to whom it is addressed, and
  - (b) the letter must not be opened, inspected or read by anyone except the person or body to whom it has been addressed or by some person authorised by that person or body.
- (2) A letter addressed to a detainee from an exempt body must not be opened, inspected or read by anyone except the detainee to whom it is addressed or some person authorised by that detainee.
- (3) If an exempt person sends to a detainee a letter in a sealed envelope accompanied by a letter addressed to the centre manager claiming privilege in respect of the letter in the sealed envelope, the sealed envelope and letter must not be opened, inspected or read by anyone except the detainee or some person authorised by the detainee.
- (4) However, if the centre manager is of the opinion that the sealed envelope may contain contraband or any item or matter that is likely to adversely affect the security, safety or good order of the detention centre, the centre manager may require the detainee to open the sealed envelope in the centre manager's presence.
- (5) If a sealed envelope so opened is found to contain contraband or any item or matter that, in the opinion of the centre manager, is likely to adversely affect the security, safety or good order of the detention centre, the centre manager may take possession of the envelope and its contents and may deal with them in accordance with any directions given specifically or generally by the Director-General.

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

A detainee may:

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

## **Division 3 Telephone communications**

### **43 Telephone calls generally**

- (1) A detainee may request the centre manager (either directly or through a juvenile justice officer employed at the detention centre) to be allowed telephone contact with:
  - (a) a juvenile justice officer (wherever employed), or
  - (b) the detainee's legal practitioner, or
  - (c) an exempt body.
- (2) A juvenile justice officer who receives such a request:
  - (a) if he or she has the authority to do so, must facilitate such telephone contact as soon as practicable after receiving the request, or
  - (b) in any other case, must immediately refer the request to the centre manager.
- (3) The centre manager must ensure that procedures are in place that facilitate telephone contact in accordance with this clause on the day the request is made or as soon as practicable after that day.
- (4) This clause does not prevent the centre manager from authorising telephone contact with persons or bodies not referred to in this clause.

### **44 Monitoring of telephone calls**

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

**Note—**

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

- (4) Communications made during a telephone call between a detainee and any of the following persons or bodies are not to be monitored:
  - (a) an exempt body,
  - (b) the detainee's legal practitioner,
  - (c) the Health Care Complaints Commission,

(d) the Mental Health Helpline,

(e) the Oral Health Hotline.

- (5) In this clause, **monitor** means listen to or record communications made during a telephone call.

#### **45 Termination of telephone calls**

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

### **Division 4 Communications with staff members**

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

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

### **Part 5 Complaints**

#### **47 Definitions**

In this Part:

**complainant** means a person who makes a complaint under this Part.

**complaints register** means a complaints register kept under clause 55.

**officer of the Department** does not include the centre manager or any other staff

member of a detention centre.

**referee**, in relation to a complaint, means the person who deals with the complaint.

**representative** of a detainee, means:

- (a) a family member or carer of the detainee or any other person who is significant to the detainee, or
- (b) the Official Visitor for the detention centre in which the detainee is detained, or
- (c) the New South Wales Ombudsman, or
- (d) a support person, or
- (e) a legal practitioner, or
- (f) a chaplain.

**support person** for a detainee, means:

- (a) a person who is authorised to visit the detainee under Division 1 of Part 4, or
- (b) another detainee at the detention centre, or
- (c) a staff member of the detention centre,

being a person who the detainee wishes to have as a support person, and who agrees to be the detainee's support person.

#### **48 Who may make a complaint**

- (1) A complaint concerning the administration or management of a detention centre may be made by any person.
- (2) A complaint concerning the treatment of a particular detainee may be made by the detainee or by a representative of the detainee.

#### **49 How complaints may be made**

- (1) A complaint may be addressed, either orally or in writing, to a prescribed person.
- (2) A written complaint addressed to a prescribed person may be lodged with that person or with any other prescribed person.
- (3) A written complaint addressed to a prescribed person and lodged with another prescribed person is to be immediately referred to the person to whom the complaint is addressed.
- (4) If a detainee requests a prescribed person to do so, the prescribed person must ensure that all reasonable steps are taken to provide assistance to the detainee in

making a complaint under this Part, including, where necessary, the provision of an interpreter.

- (5) Except in such circumstances as may be provided by the complaints guidelines, an envelope purporting to contain a complaint must not be opened or its contents inspected or read by anyone other than the person to whom it is addressed.
- (6) For the purposes of this clause only, a complaint addressed to the Director, Court Logistics, Classification and Intelligence is to be treated as a complaint addressed to the centre manager of a detention centre.
- (7) In this clause, **prescribed person** means:
  - (a) the centre manager or any other staff member of a detention centre, and
  - (b) the Director-General or any other officer of the Department.

## **50 Who may deal with complaints**

- (1) A complaint is to be dealt with by the person to whom it is made or addressed or by such other person as the complaints guidelines may permit or require.
- (2) The complaints guidelines may permit or require specified classes of complaints to be dealt with by specified persons, or specified classes of persons, instead of by the persons to whom they are addressed.
- (3) If a person to whom a complaint is addressed refers the complaint to some other person in accordance with the complaints guidelines, the person to whom the complaint was addressed must inform the complainant of that fact.

## **51 How complaints to be dealt with**

- (1) The referee for a complaint may conduct a hearing into the matters raised by the complaint.
- (2) For the purposes of any such hearing, the referee:
  - (a) may invite any person to make representations in relation to the complaint, and
  - (b) if the complaint makes allegations against any other person, must invite the complainant and that other person to make representations in support of, or in reply to, the allegations.
- (3) A person who is invited to make representations may decline to do so.
- (4) Subject to this Part, the procedures for dealing with a complaint are to be as set out in the complaints guidelines.



## **52 Representation of complainants**

- (1) This clause applies if a complainant is invited to make representations in relation to a complaint.
- (2) The complainant may be accompanied by a support person when making any representations.
- (3) If a complainant wishes to nominate a support person but is unable to do so, the referee must nominate a person who, in the referee's opinion, is appropriate to act as a support person for the detainee.
- (4) The detainee may decline to be accompanied by a support person nominated by the referee.
- (5) The Director-General is to ensure that all reasonable steps are taken to provide an interpreter when the detainee makes representations in either or both of the following circumstances:
  - (a) the detainee has difficulty communicating because of an intellectual or physical disability or impairment,
  - (b) the detainee has difficulty communicating in English.

## **53 Complainant to be notified of certain matters**

- (1) As soon as practicable after receiving a complaint, the referee must notify the complainant of the following:
  - (a) the fact that the referee is dealing with the complaint,
  - (b) how the referee may be contacted about the complaint,
  - (c) the procedures to be followed by the referee in dealing with the complaint (including whether the complainant will be invited to appear before the referee to make representations in connection with the complaint),
  - (d) when the complainant can expect a decision on the complaint.
- (2) As soon as practicable after making a decision on a complaint, the referee must notify the complainant:
  - (a) of the decision that has been made, and
  - (b) of the action (if any) that the complainant can expect to occur as a consequence of the decision.
- (3) As far as is practicable, all such information is to be communicated in such a way so as to be readily understood by the complainant.

- (4) The complaints guidelines may specify classes of complaint (being complaints of a trivial nature) in respect of which notice under this clause need not be given or may be given orally.

#### **54 Review of decision on complaint**

- (1) A complainant who is not satisfied with the decision on the complaint may apply to the referee's supervisor or to the Director-General for a review of that decision.
- (2) An application for a review is to be dealt with in accordance with the complaints guidelines.
- (3) An application for a review of the decision on a complaint must not be dealt with by the person who dealt with the complaint or by any person who is subordinate to the person who dealt with the complaint.

#### **55 Complaints registers**

- (1) A complaints register is to be kept:
  - (a) by the Director-General (in relation to complaints made to the Director-General or to officers of the Department), and
  - (b) by the centre manager of each detention centre (in relation to complaints made to the centre manager or to staff members of the centre), and
  - (c) by the Director, Court Logistics, Classification and Intelligence (in relation to complaints made to the Director).
- (2) The complaints registers are to be available for inspection by the New South Wales Ombudsman.
- (3) The complaints register kept by the centre manager of a detention centre is also to be available for inspection by the Official Visitor for the centre to which the register relates.

#### **56 Information to be recorded in complaints register**

- (1) The following information is to be recorded in the relevant complaints register in respect of each complaint:
  - (a) the date on which the complaint was made,
  - (b) the name of the complainant,
  - (c) the substance of the complaint,
  - (d) the name of the referee for the complaint,
  - (e) brief particulars of the procedures followed by the referee in dealing with the

complaint,

(f) the decision that was made on the complaint,

(g) the date on which the complainant was informed of the referee's decision on the complaint,

(h) if the complaint was not disposed of within 21 days after it was made, the reason why it was not disposed of within that time,

(i) such other information in relation to the complaint as the complaints guidelines require to be recorded in the register.

(2) The complaints guidelines may specify classes of complaint (being complaints of a trivial nature) in respect of which information is not required to be recorded in the relevant complaints register.

## **57 Complaints guidelines**

(1) The Director-General may issue guidelines as to how complaints, and applications for the review of decisions on complaints, are to be dealt with.

(2) Copies of the complaints guidelines are to be available for inspection by detainees and visitors at each detention centre as well as at offices of the Department.

## **Part 6 Leave**

### **58 Definitions**

In this Part:

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

**detention period**, in relation to a person subject to control, means the period:

(a) starting on the commencement of the control order or sentence of imprisonment under which the person is detained (or, if the person is subject to more than one control order or sentence of imprisonment, the first of them), and

(b) ending on the person's earliest release date.

**earliest release date**, in relation to a person subject to control, means the first date on which the person is entitled to be released from a detention centre or is eligible for release on parole.

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

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

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

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

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

## **60 Day leave**

- (1) A person subject to control may be granted day leave only if:
  - (a) in the case of a person who is being detained for a serious children's indictable offence and who is serving a detention period of more than 2 years—there is 12 months or less left until the person's earliest release date, or
  - (b) in the case of a classified person who is being detained for an indictable offence (not being a person to whom paragraph (a) applies)—the person has served at least one third of the person's detention period, or
  - (c) in the case of any other person subject to control—the person has served at least one quarter of the person's detention period.
- (2) Despite subclause (1), the Director-General may grant day leave to a person subject to control at any time if the Director-General is satisfied that exceptional circumstances justify the grant of day leave.

**Note—**

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

## **61 Overnight leave**

- (1) A person subject to control may be granted overnight leave only if:
  - (a) in the case of a person who is being detained for a serious children's indictable offence and who is serving a detention period of more than 2 years—there is 6 months or less left until the person's earliest release date, or
  - (b) in the case of a classified person who is being detained for an indictable offence (not being a person to whom paragraph (a) applies)—the person has served at least two thirds of the person's detention period, or
  - (c) in the case of any other person subject to control—the person has served at least one half of the person's detention period.
- (2) Despite subclause (1), the Director-General may grant overnight leave to a person subject to control at any time if the Director-General is satisfied that exceptional circumstances justify the grant of overnight leave.

**Note—**

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

## **Part 7 Maintenance of order**

### **Division 1 Order generally**

#### **62 Definitions**

In this Division:

**force** includes threat of the use of force and use of instruments of restraint.

**instruments of restraint** includes handcuffs, ankle cuffs, flexi cuffs, restraining belts, riot shields and such other articles, or classes of articles, as are declared by the Director-General, by order published in the Gazette, to be instruments of restraint for the purposes of this Regulation.

#### **63 Order generally**

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

- (3) A juvenile justice officer is not to engage in behaviour toward a detainee:
  - (a) that is intimidating, humiliating, demeaning, threatening or oppressive, or
  - (b) that otherwise constitutes an abuse of the officer's authority.

#### **64 Use of dogs to assist in drug detection**

A juvenile justice officer may use a dog to assist in the detection of drugs in a detention centre.

#### **65 Use of force**

- (1) A juvenile justice officer must not use force against any person in a detention centre except for the following purposes:
  - (a) to prevent a detainee from injuring himself or herself,
  - (b) to protect the officer or other persons from attack or harm,
  - (c) to prevent a detainee from inflicting serious damage to property,
  - (d) to prevent a detainee from escaping,
  - (e) to prevent a person from entering a detention centre by force,
  - (f) to search a detainee in circumstances in which the detainee refuses to submit to being searched,
  - (g) to seize any dangerous or harmful article or substance that is in the possession of a detainee,
  - (h) to prevent or quell a riot or other disturbance,
  - (i) to protect a dog being used to assist in the detection of drugs in a detention centre from attack or harm.
- (2) A juvenile justice officer may also use force in order to move a detainee who refuses to move from one location to another in accordance with an order of that officer, but only if the officer first gives a warning to the detainee of the consequences of failing to comply with the order.
- (3) In dealing with a detainee, a juvenile justice officer must use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the detainee is to be avoided if at all possible.

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

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

of force.

(2) The report:

- (a) must be in writing, and
- (b) must specify the name of each person who has been subjected to force and the name of each officer who was involved in the use of force, and
- (c) must specify the location where the use of force occurred, and
- (d) must describe the nature of the force used and the purpose for which, or the circumstances in which, force was used, and
- (e) must be signed by each officer involved in the use of force.

## **Division 2 Testing for alcohol or drugs**

### **67 Breath testing**

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

### **68 Evidence as to presence of alcohol or intoxicating substance**

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

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

is admissible in evidence of the facts so certified.

(2) In any such proceedings, evidence of:

- (a) the condition of the device by means of which the breath test was carried out, or
- (b) the manner in which the breath test was carried out,

is not required unless evidence that the device was not in proper condition or that the test was not properly carried out has been adduced.

## **69 Urine sample where drug use suspected**

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

## **70 Urine sample whether or not drug use suspected**

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

## **71 Evidence as to use of drugs**

- (1) In any proceedings for misbehaviour that are being dealt with by the centre manager, being proceedings in which it is alleged that a detainee has been under the influence of a drug or that a drug has been present in the detainee's urine, a certificate signed by a juvenile justice officer to the effect that:
  - (a) the juvenile justice officer received a sample of urine obtained in a specified manner, or
  - (b) the juvenile justice officer arranged for the sample to be submitted for analysis by a government analyst to determine the presence of any drugs in the detainee's body or urine, or



(c) the container was sealed, and marked or labelled, in a specified manner,  
is admissible in evidence of the facts so certified.

(2) In any such proceedings, a certificate signed by a government analyst to the effect that, on a specified day:

- (a) the analyst received for analysis a container holding a sample of urine, or
  - (b) the container, when received, was sealed with an unbroken seal, and was marked or labelled in a specified manner, or
  - (c) the analyst carried out an analysis of the sample to determine the presence of drugs in the urine, or
  - (d) the analyst determined that a specified drug was present or was present to a specified extent in the urine, or
  - (e) the analyst was, at the time of the analysis, a government analyst,
- is admissible in evidence of the facts so certified.

(3) In any such proceedings:

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

## **72 Supply of test results to Justice Health**

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

## **Part 8 Misbehaviour**

### **Division 1 Misbehaviour generally**

#### **73 Punishments for misbehaviour**

- (1) A punishment referred to in section 21 of the Act may be imposed for the following misbehaviour:
- (a) an offence under section 37A of the Act,

(b) a breach of Schedule 1.

(2) An offence under section 37A of the Act or a breach of Part 2 of Schedule 1 is declared to be ***serious misbehaviour*** for the purposes of section 21 (1) (e) of the Act.

#### **74 Misbehaviour**

A detainee must not:

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

#### **75 Allegations of misbehaviour**

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

#### **76 Visits by prescribed persons**

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

- (a) a legal practitioner's clerk authorised in writing by a detainee's legal practitioner,
- (b) a registered medical practitioner,
- (c) the Official Visitor for the detention centre,
- (d) a field officer,
- (e) a person conducting an inspection of the detention centre in accordance with section 8 of the Act.

### **Division 2 Misbehaviour dealt with otherwise than by the Children's Court**

#### **77 Application of Division**

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

#### **78 Allegations of misbehaviour**

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

## **79 Inquiry to be held**

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

## **80 Adjournments**

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

## **81 Procedure after guilty plea**

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

## **82 Procedure after not guilty plea**

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

## **83 Procedure generally**

- (1) An inquiry must be conducted with as little formality and technicality, and with as much expedition, as fairness to the detainee, the requirements of the Act and this Regulation and the proper consideration of the allegation permit.
- (2) Neither the person who made the allegation nor the detainee are entitled to be represented by a legal practitioner or by any other person.
- (3) If the detainee refuses or fails to attend the inquiry, the centre manager may deal with the allegation in the detainee's absence.
- (4) Evidence must not be required to be given on oath at the inquiry.
- (5) The centre manager may allow such persons to participate in the inquiry as the centre manager thinks fit.

- (6) A detainee may be dealt with for misbehaviour even though the misbehaviour constitutes an offence.
- (7) Punishment must not be imposed on a person found guilty of misbehaviour if criminal proceedings have been brought in respect of substantially the same facts as those on which the person has been found guilty.

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

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

#### **85 Transfer of inquiries**

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

#### **86 Recording of punishment**

- (1) When the centre manager imposes a punishment under section 21 of the Act, the centre manager must keep a record of the following particulars:
  - (a) particulars of the detainee's name and age,
  - (b) particulars of the dates and times when the misbehaviour occurred,
  - (c) particulars of the dates and times of the inquiry into the allegation of misbehaviour,
  - (d) particulars of the name and official capacity of the person who made the allegation,
  - (e) particulars of the detainee's plea,
  - (f) particulars of the evidence given at the inquiry,
  - (g) particulars of the reasons for which the detainee was found guilty of misbehaviour,
  - (h) particulars of the punishment imposed on the detainee and of the reasons for which that particular punishment was imposed.
- (2) The centre manager must forward to the Director-General, within 10 days after the end of each calendar month, a copy of all records made by the centre manager under this clause for that month.

## **Division 3 Misbehaviour dealt with by the Children's Court**

### **87 Application of Division**

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

### **88 Allegations of misbehaviour**

The centre manager must, as soon as practicable after it is alleged that a detainee has been guilty of misbehaviour, make arrangements with a Children's Magistrate for hearing the allegation.

### **89 Notice of hearing**

- (1) The centre manager must cause a notice to be served on the detainee concerned, stating the allegation and advising that the detainee is required to appear before the Children's Court for the purpose of hearing the allegation.
- (2) The notice must state:
  - (a) the name of the person who made the allegation, and
  - (b) the nature of the alleged misbehaviour, and
  - (c) the date and time when, and the place where, the detainee's appearance before the Children's Court is required, and
  - (d) that the detainee must indicate to the centre manager, not later than 8 hours prior to the detainee's appearance before the Children's Court, whether or not the alleged misbehaviour is admitted or denied, and
  - (e) that the detainee is entitled to be legally represented at the hearing, and
  - (f) that the detainee is entitled to give evidence before the Children's Court in respect of the alleged misbehaviour.
- (3) It is the duty of the centre manager to ensure, as far as possible, that the detainee understands the meaning of the notice.

## **Part 9 Parole**

### **90 Definitions**

In this Part:

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

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

**supervisor** means:

- (a) a person employed in the Department as a supervisor for the purposes of this Part (whether or not the person performs other duties in the Department), or
- (b) a probation and parole officer within the meaning of the *Crimes (Administration of Sentences) Act 1999*.

## **91 Material in support of parole orders**

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

## **92 Parole orders**

- (1) A parole order made under the applied Act must be in writing in a form approved by the Minister.
- (2) A copy of the order is to be given to the offender, and further copies are to be sent to the following persons:

- (a) the centre manager of the detention centre in which the detainee is kept,
  - (b) the Director-General.
- (3) Copies of the order sent to the centre manager of the detention centre are, if practicable, to be sent so as to arrive at the detention centre at or before the time the detainee arrives.

### **93 Parole order to be explained to detainee**

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

### **94 Standard conditions of parole**

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

- (a) the detainee must be of good behaviour,
- (b) the detainee must not commit any offence,
- (c) the detainee must adapt to normal lawful community life.

### **95 Supervision while on parole**

- (1) A condition of a parole order may require the detainee to be subject to supervision for a period of up to:
- (a) 3 years, in the case of a classified person, or

(b) 2 years, in any other case.

- (2) The supervision period starts from the date on which the detainee is released in accordance with the order.
- (3) For the purposes of section 128 (3) of the applied Act, the prescribed supervision is supervision by a supervisor.
- (4) As soon as practicable after receiving a parole order that requires a detainee to be supervised, the Director-General must assign a supervisor to supervise the detainee.
- (5) The Director-General may from time to time assign another supervisor to supervise the detainee in place of the supervisor previously assigned and, in that event, must cause notice of that fact to be sent to the detainee.

## **96 Supervision conditions**

- (1) This clause applies to a detainee whose parole order includes a condition requiring that the detainee be subject to supervision.
- (2) While the detainee is subject to supervision by a supervisor under the condition, the detainee has the following obligations:
  - (a) to obey all reasonable directions of the supervisor,
  - (b) to report to the supervisor (or to another person nominated by the supervisor) at such times and places as the supervisor may from time to time direct,
  - (c) to be available for interview at such times and places as the supervisor (or the supervisor's nominee) may from time to time direct,
  - (d) to reside at an address agreed on by the supervisor,
  - (e) to receive visits at that address by the supervisor at such times as the supervisor considers necessary,
  - (f) to permit the supervisor to enter that address for the purposes of such visits,
  - (g) not to travel outside the boundaries of New South Wales without the express approval of the Director-General,
  - (h) not to leave Australia without the permission of the Children's Court,
  - (i) to enter into employment arranged or agreed on by the supervisor, or to make himself or herself available for employment as instructed by the supervisor,
  - (j) to notify the supervisor of any intention to change his or her employment:
    - (i) if practicable, before the change occurs, or



- (ii) otherwise, at his or her next interview with the supervisor,
  - (k) not to associate with any person or persons specified by the supervisor,
  - (l) not to frequent or visit any place or district designated by the supervisor.
- (3) A detainee's supervisor may, with the concurrence of the Director-General, direct that the conditions of the detainee's parole order in relation to supervision are suspended.
- (4) Such a direction takes effect when notice of the direction is given to the detainee.

#### **97 Variation of conditions**

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

#### **98 Revocation of parole order before release**

- (1) For the purposes of section 130 of the applied Act, the circumstances set out in subclause (2) are prescribed as circumstances in which the Children's Court may revoke a parole order.
- (2) The circumstances concerned are circumstances in which the Children's Court, after the making of the order and before the release of the detainee, decides that it has sufficient reason to believe that the detainee, if released from custody, would not be able to adapt to normal lawful community life.
- (3) The Children's Court must send copies of an order under section 130 of the applied Act to the centre manager of the detention centre in which the detainee is kept.
- (4) As soon as practicable after receiving the order, the centre manager must ensure that:
- (a) the order is read to the detainee, and
  - (b) the effect of the order is explained to the detainee in language that is capable of being readily understood by the detainee, and
  - (c) the detainee's rights to a review of the revocation are explained to the detainee in language that is capable of being readily understood by the detainee, and
  - (d) a copy of the order is handed to the detainee.

- (5) The Children's Court must send notice of the revocation of a parole order under section 130 of the applied Act to the Director-General.

#### **99 Intention to refuse parole**

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

#### **100 Decision to refuse parole following review**

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

- (3) The centre manager must keep a copy of the notice.
- (4) The Registrar of the Children's Court must send a copy of the notice to the Director-General.

#### **101 Revocation of parole order and review of revocation**

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

#### **102 Decision on review of revocation**

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

language that is capable of being readily understood by the detainee.

- (3) The Registrar of the Children's Court must send a copy of the notice to the Director-General.

### **103 Notice of consequential revocation of other parole orders**

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

### **104 Inquiry into suspected breach of parole**

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

### **105 Arrest warrants**

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

### **106 Warrants of commitment**

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

### **107 Delegation of functions**

A function conferred or imposed by this Part on the centre manager of a detention centre may be delegated to a juvenile justice officer.

## **Part 10 Conduct of juvenile justice officers regarding alcohol and**

## prohibited drugs

### Division 1 Preliminary

#### 108 Interpretation

(1) In this Part:

**AS/NZ 4308:2008** means the Australian/New Zealand Standard entitled AS/NZS 4308:2008, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*, as published jointly by Standards Australia and Standards New Zealand on 19 March 2008.

**disciplinary matter** means any procedure of a disciplinary nature or other related proceedings relating to a contravention of a provision of this Part and includes, but is not limited to, a disciplinary matter referred to in Part 2.7 of Chapter 2 of the [Public Sector Employment and Management Act 2002](#).

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

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

**prescribed concentration of alcohol** means a concentration of 0.02 grammes or more of alcohol in 210 litres of breath or 100 millilitres of blood.

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

(2) In this Part, a juvenile justice officer **presents for duty** when the officer is present at the officer's place of work and about to go on duty.

(3) In this Part, a juvenile justice officer **tests positive for alcohol** if a test conducted

under Division 2 of Part 4A of the Act indicates that the officer had the prescribed concentration of alcohol in his or her breath or blood:

- (a) when the officer presented for duty, or
- (b) while the officer was on duty.

(4) In this Part, a juvenile justice officer **tests positive for prohibited drugs** if a test conducted under Division 2 of Part 4A of the Act indicates that the officer had a prohibited drug present in any of his or her biological material:

- (a) when the officer presented for duty, or
- (b) while the officer was on duty.

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

## **109 Appointment of authorised persons**

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

## **Division 2 Obligations of juvenile justice officers**

### **110 Juvenile justice officers must not have prescribed concentration of alcohol in breath**

**or blood**

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

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

**111 Juvenile justice officers must not have prohibited drug present in biological material**

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

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

**Division 3 Testing of juvenile justice officers**

**112 Testing of juvenile justice officers**

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

**113 General rules for the provision or taking of certain samples**

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

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

#### **114 Breath testing and breath analysis of juvenile justice officers**

- (1) As soon as practicable after a juvenile justice officer has undergone a breath test under Division 2 of Part 4A of the Act, the authorised person who conducted the breath test must, if the concentration of alcohol determined by the breath test to be present in the officer's breath or blood exceeds the prescribed concentration, deliver to the officer a statement in writing signed by the authorised person specifying:
- (a) the concentration of alcohol determined by the breath test to be present in the officer's breath or blood and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood, and
  - (b) the day on which and time of the day at which the breath test was completed.
- (2) An authorised person may require a juvenile justice officer to submit to a breath analysis in accordance with the directions of the authorised person if:
- (a) it appears to the authorised person as a result of a breath test under Division 2 of Part 4A of the Act that the prescribed concentration of alcohol may be present in the officer's breath or blood, or
  - (b) the officer refuses or fails to undergo a breath test under Division 2 of Part 4A of the Act in accordance with the directions of the authorised person when requested to do so by the authorised person.
- (3) As soon as practicable after a juvenile justice officer has submitted to a breath analysis the authorised person operating the breath analysing instrument must deliver to the officer a statement in writing signed by the authorised person specifying:
- (a) the concentration of alcohol determined by the analysis to be present in the officer's breath or blood and expressed in grammes of alcohol in 210 litres of



breath or 100 millilitres of blood, and

(b) the day on which and time of the day at which the breath analysis was completed.

(4) A juvenile justice officer who is required to undergo a breath test or submit to a breath analysis may request the authorised person making the requisition to arrange for the taking (in the presence of an authorised person) of a sample of the officer's blood for analysis, at the officer's own expense, by:

(a) a medical practitioner nominated by the officer, or

(b) a medical practitioner nominated by the authorised person at the officer's request, or

(c) a pathology specimen collector at a collection centre nominated by the officer, or

(d) a pathology specimen collector at a collection centre nominated by the authorised person at the officer's request.

(5) The making of any such request or the taking of a sample of a juvenile justice officer's blood does not absolve the officer from the obligation imposed on the officer to undergo a breath test or submit to a breath analysis in accordance with this clause.

(6) In this clause, **collection centre** means a pathology collection centre that is operated by, or in connection with, a pathology laboratory that is accredited by the National Association of Testing Authorities.

#### **115 Restrictions on requiring breath test, breath analysis or non-invasive sample**

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

(a) if the officer has been admitted to a hospital for medical treatment, unless:

(i) the medical practitioner who attends the officer at the hospital (or, if no medical practitioner is present to attend the officer, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures) has been notified of the intention to make the requisition, and

(ii) the medical practitioner or registered nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the officer, or

(b) if it appears to the authorised person that it would (because of injuries sustained by the officer) be dangerous to the officer's medical condition if the officer complied with the requisition, or

(c) in the case of a requirement for a test for the purpose of testing for the presence or concentration of alcohol, at any time after the expiration of 3 hours from the latest of:

- (i) the time the officer last presented for duty, or
  - (ii) the time the officer was last involved in an incident referred to in section 37J (3) of the Act (if such an incident occurred), or
  - (iii) the time the officer last ceased to be on duty, or
- (d) in the case of a requirement for a test for the purpose of testing for the presence of a prohibited drug, at any time after the expiration of 24 hours from the latest of:
- (i) the time the officer last presented for duty, or
  - (ii) the time the officer was last involved in an incident referred to in section 37J (3) of the Act (if such an incident occurred), or
  - (iii) the time the officer last ceased to be on duty, or
- (e) at the officer's home.

**116 Action to be taken with respect to blood samples**

- (1) A medical practitioner or registered nurse by whom a sample of a juvenile justice officer's blood is taken under Division 2 of Part 4A of the Act must:
  - (a) divide the sample into 3 approximately equal portions, and
  - (b) place each portion of the sample into a separate container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (2) Of the sealed containers:
  - (a) two containers must, as soon as reasonably practicable, be transported to an approved laboratory for analysis by a government analyst in accordance with subclause (4), and must be stored at that laboratory on behalf of the Director-General, and
  - (b) the other container:
    - (i) if the officer has requested a part of the sample, must be given to the officer, or
    - (ii) if the officer does not request or is not capable of requesting a part of the sample, must, as soon as reasonably practicable, be transported to the approved laboratory to which the other two containers were sent and must be stored at that laboratory on behalf of the Director-General.
- (3) If a juvenile justice officer does not request or is not capable of requesting a part of

the sample, the officer may, within 12 months after the taking of the sample, apply to the approved laboratory for the container referred to in subclause (2) (b) (ii) to be sent for analysis (at the officer's own expense) to a medical practitioner or laboratory nominated by the officer.

- (4) The authorised person may arrange for the analyst to:
- (a) determine whether the sample contains alcohol, and if so, the concentration of alcohol, or
  - (b) determine whether the sample contains a prohibited drug, or
  - (c) determine whether the sample contains alcohol, and if so, the concentration of alcohol and determine whether the sample also contains a prohibited drug.

#### **117 Action to be taken with respect to non-invasive samples**

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

- (3) If a juvenile justice officer does not request or is not capable of requesting a part of the sample, the officer may, within 12 months after the taking of the sample, apply to the approved laboratory for the container referred to in subclause (2) (b) (ii) to be sent, for analysis (at the officer's own expense) to a medical practitioner or laboratory nominated by the officer.
- (4) The authorised person may arrange for the analyst:
  - (a) if the non-invasive sample was provided or taken under section 37K of the Act, to determine whether the sample indicates that the blood of the juvenile justice officer, by whom the sample was provided or from whom the sample was taken, contained alcohol, and if so, the concentration of alcohol in the blood of the officer or determine whether the sample contains a prohibited drug, or
  - (b) if the non-invasive sample was provided or taken under section 37J of the Act, to determine whether the sample contains a prohibited drug.
- (5) In the case of samples of urine, any sealed containers referred to in subclause (2) must be handled in accordance with the procedure set out in AS/NZ 4308:2008 or any other procedure approved by the Director-General for the purposes of this clause.

#### **118 Analysis of samples**

- (1) A government analyst to whom a portion of a sample of blood or a non-invasive sample is submitted for analysis under clause 116 or 117 may carry out an analysis in accordance with the arrangement made by the authorised person under clause 116 (4) or 117 (4), as the case requires.
- (2) The analysis must be carried out, and a report provided, in accordance with:
  - (a) AS/NZ 4308:2008, except as provided by paragraph (b), or
  - (b) such other procedure as may be directed by the Director-General.

### **Division 4 Evidence**

#### **119 Definitions**

In this Division:

**alcohol contravention** means a contravention of clause 110.

**prohibited drug contravention** means a contravention of clause 111.

#### **120 Certificate evidence of concentration of alcohol in breath or blood determined by breath test or breath analysis**

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

- (a) the authorised person is a duly appointed authorised person, and
- (b) the person named in the certificate underwent a breath test, and
- (c) the breath test was carried out on the person's breath by means of a device of a type approved by the Governor for the conduct of breath tests under the [Road Transport Act 2013](#), and
- (d) the breath test was carried out on the day and completed at the time stated in the certificate, and
- (e) a concentration of alcohol (determined by that breath test and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood) was present in the breath or blood of that person on the day and at the time stated in the certificate, and
- (f) a statement in writing required by clause 114 (1) was delivered in accordance with that subclause,

is prima facie evidence of the particulars certified in and by the certificate.

- (2) For the purposes of any disciplinary matter involving an alcohol contravention, a certificate purporting to be signed by an authorised person and certifying that:

- (a) the authorised person is a duly appointed authorised person, and
- (b) the person named in the certificate submitted to a breath analysis, and
- (c) the breath analysis was carried out by a breath analysing instrument within the meaning of Division 2 of Part 4A of the Act, and
- (d) the analysis was made on the day and completed at the time stated in the certificate, and
- (e) a concentration of alcohol (determined by that breath analysing instrument and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood) was present in the breath or blood of that person on the day and at the time stated in the certificate, and
- (f) a statement in writing required by clause 114 (3) was delivered in accordance with that subclause,

is prima facie evidence of the particulars certified in and by the certificate.

- (3) For the purposes of any disciplinary matter involving an alcohol contravention, evidence of the condition of a device by means of which a breath test was carried out or of a breath analysing instrument or the manner in which the device or instrument was operated is not to be required unless evidence that the device or instrument was

not in proper condition or was not properly operated has been adduced.

- (4) For the purposes of any disciplinary matter involving an alcohol contravention, evidence may be given of the concentration of alcohol present in the breath or blood of the juvenile justice officer, as determined by a device by which a breath test was carried out or by a breath analysing instrument operated by an authorised person.
- (5) The concentration of alcohol so determined is taken to be the concentration of alcohol in the breath or blood of the juvenile justice officer at the time the officer presented for duty if the breath analysis was made within 3 hours after that time, unless the officer proves that the concentration of alcohol in the officer's breath or blood at that time was less than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of blood.
- (6) The concentration of alcohol so determined is taken to be the concentration of alcohol in the breath or blood of the juvenile justice officer while the officer was on duty if the breath analysis was made:
  - (a) while the officer was on duty, or
  - (b) within 3 hours after the officer ceased to be on duty,unless the officer proves that the concentration of alcohol in the officer's breath or blood at that time was less than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of blood.

**121 Certificate evidence of concentration of alcohol in blood other than in relation to a breath test or breath analysis**

- (1) For the purposes of any disciplinary matter involving an alcohol contravention, a certificate purporting to be signed by a medical practitioner or registered nurse and certifying any one or more of the following matters:
  - (a) that the practitioner or nurse was a medical practitioner or registered nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the person's blood or took from, or was provided with, a non-invasive sample in accordance with Division 2 of Part 4A of the Act on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with Division 2 of Part 4A of the Act and this Part,
  - (d) that the practitioner or nurse used equipment of a specified description in so taking and dealing with the sample,
  - (e) that the container into which the sample was placed was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

- (2) For the purposes of any disciplinary matter involving an alcohol contravention, a certificate purporting to be signed by an authorised person and certifying any one or more of the following matters:
- (a) that the authorised person received a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from the specified person and taken in accordance with Division 2 of Part 4A of the Act and this Part,
  - (b) that the authorised person arranged for the portion to be submitted for analysis by a government analyst to determine whether the sample indicated that the blood of the juvenile justice officer by whom the sample was provided or from whom the sample was taken contained alcohol, and if so, the concentration of alcohol in the blood of the officer,
  - (c) that the container into which the sample was placed was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

- (3) For the purposes of any disciplinary matter involving an alcohol contravention, a certificate purporting to be signed by a government analyst and certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from the specified person in a container submitted for analysis under Division 2 of Part 4A of the Act and this Part,
  - (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
  - (c) that, on receipt by the analyst of the container, the seal was unbroken,
  - (d) that the analyst carried out an analysis of the portion to determine whether the sample indicated that the blood of the juvenile justice officer by whom the sample was provided or from whom the sample was taken contained alcohol, and if so, the concentration of alcohol in the blood of the officer,
  - (e) that the concentration of alcohol in the blood of the officer determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample,
  - (f) that the analyst was, at the time of the analysis, a government analyst,

is prima facie evidence of the matters set out in subclause (4).

- (4) A certificate under subclause (3) is prima facie evidence:
  - (a) of the particulars certified in and by the certificate, and
  - (b) that the sample was a portion of the sample of the blood of that specified person or a non-invasive sample provided by or taken from the specified person, and
  - (c) that the portion had not been tampered with before it was received by the analyst.
- (5) For the purposes of any disciplinary matter involving an alcohol contravention, evidence may be given of the concentration of alcohol present in the blood or other biological material of the officer, as determined by an analysis under Division 2 of Part 4A of the Act of a portion of a sample of the officer's blood or a non-invasive sample provided by or taken from the officer, as the case may be.
- (6) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the juvenile justice officer at the time the officer presented for duty if that sample of blood or non-invasive sample was taken within 3 hours after that time, unless the officer proves that the concentration of alcohol in the officer's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.
- (7) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the juvenile justice officer while the officer was on duty if that sample of blood or non-invasive sample was taken:
  - (a) while the officer was on duty, or
  - (b) within 3 hours after the officer ceased to be on duty,unless the officer proves that the concentration of alcohol in the officer's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

## **122 Certificate evidence of presence of a prohibited drug**

- (1) For the purposes of any disciplinary matter involving a prohibited drug contravention, a certificate purporting to be signed by a medical practitioner or registered nurse and certifying any one or more of the following matters:
  - (a) that the practitioner or nurse was a medical practitioner or registered nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the juvenile justice officer's blood or was provided with or took a non-invasive sample from the officer in accordance with Division 2 of Part 4A of the Act and this Part on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with clause 116 or 117,



is prima facie evidence of the particulars certified in and by the certificate.

- (2) For the purposes of any disciplinary matter involving a prohibited drug contravention, a certificate purporting to be signed by a person and certifying any one or more of the following matters:
- (a) that the person was provided with or took a non-invasive sample from a specified person in accordance with Division 2 of Part 4A of the Act and this Part on the day and at the time stated in the certificate,

- (b) that the person dealt with the sample in accordance with clause 117,

is prima facie evidence of the particulars certified in and by the certificate.

- (3) For the purposes of any disciplinary matter involving a prohibited drug contravention, a certificate purporting to be signed by a government analyst and certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from a specified person in a container submitted for analysis under Division 2 of Part 4A of the Act and this Part,

- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,

- (c) that, on receipt by the analyst of the container, the seal was unbroken,

- (d) that the analyst carried out an analysis of the portion to determine whether any prohibited drug was present in the sample,

- (e) that a specified prohibited drug ascertained pursuant to the analysis was present in that portion,

- (f) that the analyst was, at the time of the analysis, a government analyst,

is prima facie evidence of the matters set out in subclause (4).

- (4) A certificate under subclause (3) is prima facie evidence:

- (a) of the particulars certified in and by the certificate, and

- (b) that the portion was a portion of the sample of that specified person's blood or a non-invasive sample provided by, or taken from, that specified person, and

- (c) that the portion had not been tampered with before it was received by the analyst.

- (5) For the purposes of any disciplinary matter involving a prohibited drug contravention, evidence may be given of the presence of a prohibited drug in the blood or other

biological material of the juvenile justice officer, as determined pursuant to an analysis under Division 2 of Part 4A of the Act of a portion of a sample of the person's blood or a non-invasive sample provided by or taken from the officer.

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

### **123 Certificate evidence of appointment of authorised person**

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

## **Division 5 Consequences**

### **124 Disciplinary action**

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

### **125 Refusing to comply with a requirement under Division 2 of Part 4A of the Act**

- (1) A juvenile justice officer must not refuse:
  - (a) to undergo a breath test, or
  - (b) to submit to a breath analysis, or
  - (c) to provide, or enable the taking of, a non-invasive sample from the juvenile justice officer, or
  - (d) to comply with any other requirement of or under Division 2 of Part 4A of the Act,

in accordance with a direction given under Division 2 of Part 4A of the Act by an authorised person.

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

#### **126 Double jeopardy**

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

- (a) testing positive for alcohol or testing positive for a prohibited drug, and
- (b) contravening clause 125 (1).

#### **127 Immediate action: juvenile justice officer relieved from duty**

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

### **Division 6 Offences**

#### **128 Interfering with results of test**

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

Maximum penalty: 20 penalty units.

#### **129 Interfering or tampering with, or destroying, samples**

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

- (a) by or at the direction of a government analyst in the course of or on completion of analysis, or
- (b) in the case of a sample handed to a person on behalf of a juvenile justice officer, by or at the direction of the person, or

- (c) after the expiration of 12 months commencing on the day on which the sample was taken or provided, or a longer period (being no more than 5 years) as directed by the Director-General in respect of the sample in a direction made before such an expiration.

Maximum penalty: 20 penalty units.

## **Part 11 Justice Health matters**

### **130 Examination of detainees**

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

### **131 Detainees with serious health problems**

As soon as practicable after forming an opinion:

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

a Justice Health officer must report that he or she has formed the opinion, and the grounds for the opinion, to the centre manager.

### **132 Mental illness**

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

### **133 Detainee's diet, exercise and treatment**

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

### **134 Medical records**

- (1) Proper medical records are to be kept in respect of each detainee, with entries as to each examination that is carried out on a detainee by a Justice Health officer.
- (2) The medical records for detainees at a detention centre are to be kept at the centre in the custody of a Justice Health officer, and their contents are not to be divulged to any person outside Justice Health (including the detainee) except in accordance with guidelines established by the Chief Executive, Justice Health.
- (3) Subclause (2) does not prevent information in a detainee's medical records from being used to prepare general reports on the detainee's health for submission to the centre manager of a detention centre, and such a report must be prepared and submitted whenever the centre manager so requests.
- (4) As soon as practicable after a detainee is transferred from one detention centre to another, the detainee's medical records are to be given into the custody of a Justice Health officer at the centre to which the detainee is transferred.
- (5) Subclause (4) does not apply if the detainee is temporarily transferred to a police station or court cell complex.

### **135 Infectious diseases**

- (1) As soon as practicable after forming an opinion that a detainee has, or appears to have, a serious infectious disease, a Justice Health officer must report that he or she has formed the opinion, and the grounds for the opinion, to the centre manager.
- (2) In the case of a report from the Chief Executive, Justice Health, the centre manager must carry into effect any recommendation contained in such a report in so far as it is practicable to do so.
- (3) If it is impracticable to carry a recommendation into effect, the centre manager must report that fact to the Chief Executive, Justice Health.

- (4) In this clause, ***serious infectious disease*** means an infectious disease that is also a notifiable disease by virtue of its inclusion in Schedule 3 to the [Public Health Act 1991](#).

### **136 Death of detainees**

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

## **Part 11A Spiritual welfare**

### **136A Definition**

In this Part, ***accredited chaplain*** means a minister of religion for the time being accredited as a chaplain under clause 136C.

### **136B Religious denomination of detainees**

- (1) A detainee, on admission into a detention centre:
  - (a) may state the detainee's religious denomination, or
  - (b) may state that the detainee is of no religious denomination, or
  - (c) may decline to provide information regarding the detainee's religious denomination.
- (2) A record must be kept at a detention centre in relation to each detainee at the centre:
  - (a) of the detainee's religious denomination, or
  - (b) of the fact that the detainee is of no religious denomination, or
  - (c) that the detainee declined to provide information regarding the detainee's religious denomination.
- (3) The centre manager must, when requested to do so by an accredited chaplain, provide the chaplain with the name of each detainee at the detention centre and the detainee's religious denomination (if the detainee has provided that information).

### **136C Accreditation of chaplains**

- (1) A minister of religion may not perform the functions of a chaplain in a detention centre unless the minister:
  - (a) is accredited by the Director-General under this clause, and
  - (b) is permitted by the appropriate authority for the religious organisation of which the minister is a member to work as a chaplain in the detention centre.
- (2) The Director-General may, by instrument in writing, accredit a minister of religion who

has been endorsed as suitable and competent by the Civil Chaplaincies Advisory Committee to work as a full-time, part-time or sessional chaplain to detainees at a detention centre.

- (3) The Director-General must not accredit a minister of religion unless the minister has undergone a criminal record check and been found by the Director-General to be suitable to work as a chaplain in the centre.
- (4) The Director-General may, at any time, by instrument in writing, revoke any such accreditation.
- (5) The Director-General must give written notice of any revocation to the Civil Chaplaincies Advisory Committee.
- (6) In this clause, **Civil Chaplaincies Advisory Committee** means the committee, made up of representatives from various religious organisations, that liaises between those religious organisations and government departments in matters of chaplaincy in correctional centres, detention centres and other public institutions.

#### **136D Privileges of accredited chaplains**

- (1) With the approval of the centre manager, an accredited chaplain:
  - (a) may, when visiting a detention centre, be accompanied by assistants, whether ministers of religion or lay persons who are wholly or partly engaged in duties of a religious nature, and
  - (b) may arrange for detainees to be visited by persons suitably qualified in counselling, vocational guidance or other services.
- (2) An accredited chaplain is answerable to the Director-General for the conduct of any assistant who accompanies the accredited chaplain when visiting a detention centre.

#### **136E Responsibilities of accredited chaplains**

- (1) An accredited chaplain is responsible for the spiritual care of detainees at the detention centre to which he or she is accredited.
- (2) An accredited chaplain's responsibilities include:
  - (a) visiting detainees who are sick, injured, confined to cell or segregated from other detainees, and
  - (b) visiting detainees (or arranging for them to be visited by another minister of religion of the same denomination) in circumstances in which they are suffering from a potentially fatal illness or injury.

**136F Powers of accredited chaplains**

- (1) An accredited chaplain is entitled:
  - (a) to visit the detention centre to which he or she is accredited at all reasonable times, but not so as to disturb the ordinary routine of the centre, and
  - (b) to have access to detainees for the purpose of religious ministrations.
- (2) On Sundays or other recognised days of religious observance, and on such other days as the centre manager may permit, an accredited chaplain:
  - (a) may hold or conduct such rites, services or assemblies as pertain to the accredited chaplain's denomination, or
  - (b) with the permission of the centre manager, may hold or conduct combined services in association with ministers of religion of other denominations.
- (3) An accredited chaplain may minister to any detainee at the detention centre, unless the detainee objects.
- (4) An accredited chaplain is entitled to have access to a detainee under this clause beyond the hearing (but within the sight) of a juvenile justice officer.
- (5) An accredited chaplain is authorised, despite any other law, to disclose information relating to the welfare of a detainee to the centre manager if the chaplain considers it in the interests of the detainee or other detainees at the detention centre to do so.
- (6) With the approval of the centre manager, an accredited chaplain may pursue such matters as the accredited chaplain considers to be in the interests of the welfare of detainees at the detention centre to which he or she is accredited, and of their families.

**136G Non-accredited ministers of religion**

- (1) With the approval of the centre manager, a minister of religion of a particular denomination who is not accredited in relation to a particular detention centre:
  - (a) may visit the centre, and
  - (b) may have access to detainees of that denomination,if no other minister of religion of that denomination has been accredited for the centre.
- (2) On request by a detainee belonging to a denomination for which no minister of religion has been accredited, the centre manager (after consultation with accredited chaplains) may arrange for the detainee to be visited by a minister of religion of that denomination.



- (3) A decision by the centre manager to grant a request under subclause (2) does not affect the number of visits and maximum number of visitors to which the detainee may otherwise be entitled.
- (4) A minister of religion is entitled to have access to a detainee under this clause beyond the hearing (but within the sight) of a juvenile justice officer.
- (5) A minister of religion may only visit a detainee under this clause if the detainee does not object.

#### **136H Participation of detainees in religious observances**

- (1) The centre manager must take all reasonable steps to facilitate the participation of detainees in the religious observances of their respective religious denominations, but not so as to offer any inducement, or impose any sanction, with respect to any such participation.
- (2) A detainee may attend the following rites, services and assemblies conducted at the detention centre:
  - (a) rites, services or assemblies of the detainee's denomination,
  - (b) combined rites, services or assemblies conducted by ministers of religion of the detainee's denomination in association with ministers of religion of other denominations,
  - (c) rites, services or assemblies of other denominations.
- (3) Religious books, recognised objects of religious devotion and similar items belonging to a detainee are to be treated as approved property of the detainee.

#### **136I Use of chapels**

- (1) A detention centre chapel or a part of a detention centre that is used for the conduct of rites, services or assemblies may be used for such other purposes that are in keeping with the nature of the building, as may be determined by the centre manager after consultation with the relevant accredited chaplains.
- (2) On request by an accredited chaplain, the centre manager of a detention centre must, if reasonably practicable, make available:
  - (a) a suitable part of the centre as a detention centre chapel for the conduct of rites, services or assemblies, and
  - (b) suitable facilities for the safekeeping of books and other objects used in connection with the conduct of rites, services or assemblies,if no such detention centre chapel or facilities currently exist.

- (3) The centre manager of a detention centre is to encourage detainees to use the detention centre chapel for personal devotion, worship and meditation.
- (4) A detainee must not desecrate or abuse any books or other objects used in connection with the rites, services or assemblies of a religious denomination.
- (5) A juvenile justice officer must not damage any books or other objects used in connection with the rites, services and assemblies of a religious denomination, otherwise than in circumstances where the damage is:
  - (a) unavoidable, and
  - (b) in the course of a search or of carrying out the officer's duties.

**136J Accredited chaplains may advise committees**

- (1) With the approval of the centre manager, an accredited chaplain:
  - (a) may attend meetings of any committee concerned with the management of the detention centre to which he or she is accredited, and
  - (b) at any such meeting, may offer advice in relation to the welfare of detainees.
- (2) An accredited chaplain is not entitled to vote on any motion or proposal put before such a committee or otherwise to participate in its decisions.

**136K Accredited chaplaincy services generally**

- (1) The accredited chaplains, in collaboration with the Director-General and the appropriate religious authorities, may assist in:
  - (a) the development of community support for juvenile justice services, and
  - (b) the development and extension of accredited chaplaincy services in detention centres.
- (2) In consultation with the accredited chaplains and appropriate religious authorities, the Director-General must from time to time review the effectiveness of the accredited chaplaincy services in detention centres.

**136L Exclusion of ministers of religion on grounds of security**

The Director-General may prohibit:

- (a) a particular minister of religion, or
- (b) a minister of religion of a particular denomination,

from visiting a detention centre if of the opinion that it would be prejudicial to the good order and security of the centre to allow such a visit.

## **Part 12 Miscellaneous**

### **137 Report on inspection of detention centre by officer**

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

- (a) the physical, psychological and emotional well-being of detainees,
- (b) the social, cultural and educational development of detainees,
- (c) the general control and management of the detention centre,
- (d) the morale, conduct and functions of persons employed in the detention centre,
- (e) the condition of the premises (including the grounds, buildings, furniture, equipment and amenities) of the detention centre,
- (f) the security of the detention centre.

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

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

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

### **139 Accommodation of children in detention centres**

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

- (a) the child is a detainee, or
- (b) the child is being detained in the detention centre under Part 16 of the [\*Law Enforcement \(Powers and Responsibilities\) Act 2002\*](#).

#### **140 Attendance at youth justice conferences**

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

#### **141 Savings**

Any act, matter or thing that, immediately before the repeal of the [Children \(Detention Centres\) Regulation 2005](#) had effect under that Regulation continues to have effect under this Regulation.

### **Schedule 1 Misbehaviour**

(Clauses 73 and 74)

#### **Part 1 Misbehaviour generally**

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

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

##### **2 Unauthorised telephone calls**

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

##### **3 Lying**

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

##### **4 Disobedience**

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

##### **5 Stealing**

A detainee must not steal any property.

##### **6 Bad language**

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

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

A detainee must not have in his or her possession, or give to any other person, any article

or thing that is not approved property.

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

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

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

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

#### **10 Smoking**

A detainee must not smoke.

#### **11 Unauthorised use of equipment**

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

#### **12 Unauthorised entry to prohibited areas**

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

#### **13 Subversive behaviour**

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

#### **14 Harassment**

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

#### **15 Positive returns to tests for drugs or alcohol**

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

#### **16 Refusal to submit to searching**

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

#### **17 Fighting**

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

involved in, any fight.

#### **18 Conditions of leave**

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

#### **19 Hindering drug detector dogs**

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

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

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

#### **21 Damage to property**

A detainee must not wilfully damage any property.

### **Part 2 Serious misbehaviour**

#### **22 Mistreatment of animals**

A detainee must not mistreat any animal.

#### **23 Insubordination**

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

#### **24 Inciting misbehaviour**

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

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

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

#### **26 Unauthorised medications**

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

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

A detainee must not have in his or her possession:

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

## **28 Attempted escapes**

A detainee must not make any attempt to escape.

## **29 Indecency**

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

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

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

## **31 Threatening or intimidating behaviour**

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

## **32 Detaining person against their will**

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

## **33 Lighting fires**

A detainee must not light any fire.

## **34 Assault**

A detainee must not assault any other person.

# **Schedule 2 Forms**

(Clause 3 (2))

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

(Clause 101)

(*Children (Detention Centres) Act 1987*, section 29,

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

TO ..... [Name of detainee]

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

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

.....Registrar of the Children's Court

\* *Delete if inapplicable*

## **Form 2 Arrest warrant**

(Clause 105)

(*Children (Detention Centres) Act 1987*, section 29,

*Crimes (Administration of Sentences) Act 1999*, section 180)

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

WHEREAS ..... was sentenced to .....

by ..... [court] at ..... on .... for the offence(s) of .....

AND by order of the Children's Court dated ..... was released from a detention centre on parole on ..... in accordance with the terms of the parole order, which order has been revoked,

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

- \* and return him/her to a detention centre
- \* to serve the portion of his/her term of detention unexpired on .....
- \* and to remove him/her to .....
- \* for the purpose of conducting, within 7 days, an inquiry as to whether the order should be revoked.
- \* The Children's Court ordered the revocation of the Parole Order for breach of the following conditions of the order, namely: .....  
.....

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

Dated: .....

.....Children's Magistrate



\* *Delete if inapplicable*

TO ALL POLICE OFFICERS in the State of New South Wales

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

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

(Clause 106)

(*Children (Detention Centres) Act 1987*, section 29,

*Crimes (Administration of Sentences) Act 1999*, section 181)

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

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

.....,

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

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

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

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

.....Children's Magistrate

Date: .....

TO ALL POLICE OFFICERS in the State of New South Wales

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