

# Children (Detention Centres) Act 1987 No 57

[1987-57]



New South Wales

## Status Information

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### Provisions in force

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### Responsible Minister

- Minister for Youth Justice

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

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# Children (Detention Centres) Act 1987 No 57



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# Children (Detention Centres) Act 1987 No 57



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Definitions

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

**authorised justice** means—

- (a) a Magistrate, or
- (b) an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

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

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

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

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

**Commonwealth Criminal Code** means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

**complaints guidelines** means guidelines issued by the Secretary under section 32AA(1).

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

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

**Department** means the Department of Justice.

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

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

**detention order** means—

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

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

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

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

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

**juvenile justice officer** means a member of staff of the Department who is principally involved in the administration of this or any other Act administered by the Minister, and includes any member of staff of the Department who is in the branch of the Department known as Juvenile Justice.

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

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

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

**person on remand** means—

- (a) a child who is an accused person within the meaning of the [Bail Act 2013](#) and who has not been released on bail under that Act,
- (b) a person who is an accused person within the meaning of the [Bail Act 2013](#) and who has not been released on bail under that Act, being a person who is charged before the Children’s Court, or
- (c) a person who is an accused person within the meaning of the [Bail Act 2013](#) and who has not been released on bail under that Act, being a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of **detention order**.

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

**regulation** means a regulation made under this Act.

**Review Panel** means the Serious Young Offenders Review Panel constituted by this Act.

**Secretary** means the Secretary of the Department.

**Victims Register** means the register kept under section 100A.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) In this Act a reference to the Minister administering the *Crimes (Administration of Sentences) Act 1999* includes a reference to a person authorised by that Minister to exercise the functions of that Minister under this Act.
- (4) In this Act a reference to a person who is absent from a detention centre includes a reference to a person who has been removed or discharged from a detention centre pursuant to an order under section 24.
- (5) Notes included in this Act do not form part of this Act.

#### 4 Objects of Act

- (1) The objects of this Act are to ensure that—
- (a) persons on remand or subject to control take their places in the community as soon as possible as persons who will observe the law,
  - (b) in the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved, and
  - (c) satisfactory relationships are preserved or developed between persons on remand or subject to control and their families.
- (2) In the administration of this Act—
- (a) the welfare and interests of persons on remand or subject to control shall be given paramount consideration, and
  - (b) it shall be recognised that the punishment for an offence imposed by a court is the only punishment for that offence.

#### 4A Commonwealth detainees

- (1) This section applies in relation to a person (a **Commonwealth detainee**) who is—
- (a) the subject of a continuing detention order or interim detention order in force under Division 105A of Part 5.3 of the Commonwealth Criminal Code, and
  - (b) to be detained in a detention centre under this Act under an arrangement with the State under section 105A.21 of the Commonwealth Criminal Code.
- (2) Subject to the regulations, a Commonwealth detainee may be treated as a person subject to control for the purposes of the detention of the detainee under this Act.
- (3) The regulations may make provision for or with respect to the detention of

Commonwealth detainees under this Act and may, for that purpose, provide for the modification of provisions of this Act in their application to Commonwealth detainees.

(4) In this section—

**modification** includes addition, exception, omission or substitution.

## **Part 2 Detention centres**

### **5 Establishment of detention centres**

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

#### **Editorial note—**

For orders under this section see Gazettes No 67 of 12.4.2001, p 1881; No 200 of 17.12.2004, p 9387; No 86 of 8.7.2005, p 3612; No 93 of 1.8.2008, p 7384; No 66 of 21.5.2010, p 2175 and orders published on the NSW legislation website 2013 (254) LW 7.6.2013 and 2016 (460) LW 29.7.2016.

### **6 Secretary to have control and management of detention centres**

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

### **7 Inspection of detention centres by juvenile justice officer appointed by Secretary**

- (1) Each detention centre shall be inspected at least once every 12 months by a juvenile justice officer appointed by the Secretary for the purposes of this section.
- (2) As soon as practicable after having inspected a detention centre, the juvenile justice officer shall furnish a report to the Secretary on the results of the inspection.
- (3) A report shall deal with such matters as may be prescribed by the regulations and with such other matters as the juvenile justice officer considers appropriate to include in the report.

## **8 Inspection of detention centres by judges etc**

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

### **8A Official Visitors**

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

## **Part 3 Persons on remand and persons subject to control**

### **Division 1 Admission to detention centres**

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

- (1) Except as otherwise provided by this Act, persons on remand and persons subject to control shall be detained in detention centres.
- (2) While a regulation referred to in section 5 is in force, a person shall, so far as is reasonably practicable, be detained in a detention centre that is appropriate to the class of person to which that person belongs.

- (3) Notwithstanding subsection (1), a person on remand may be detained in a police station, during the period between the person's being charged with an offence and the person's first appearing before a court in or in connection with proceedings for the offence, but only if it is impracticable for the person to be detained in a detention centre during that period.
- (4) A child who is detained in a police station under subsection (3) shall, so far as is reasonably practicable, be detained separately from any adults detained there.
- (5) This section does not limit the operation of sections 28A, 28B and 28BA of this Act and the *Crimes (Sentencing Procedure) Act 1999*.

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

- (1) A person who is of or above the age of 21 years is not to be detained in a detention centre if the person is the subject of—
  - (a) an arrest warrant of any kind, or
  - (b) a warrant or order for the detention of the person on remand.
- (2) A person who is of or above the age of 18 years, but under the age of 21 years, is not to be detained in a detention centre if the person is the subject of an arrest warrant or order of any of the following kinds—
  - (a) a warrant issued under section 41 of the *Children (Criminal Proceedings) Act 1987* in relation to an alleged breach of a good behaviour bond or an alleged breach of probation, or
  - (b) a warrant issued under section 23 of the *Children (Community Service Orders) Act 1987* in relation to an alleged breach of a children's community service order, or
  - (c) a warrant issued under section 98 of the *Crimes (Sentencing Procedure) Act 1999* in relation to an alleged breach of a condition of a good behaviour bond (to the extent the warrant continues in force after the repeal of that section by the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*), or
  - (d) a warrant issued under section 39 of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged escape from custody, or
  - (e) a warrant issued under section 116 of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged breach of a community service order (to the extent the warrant continues in force after the repeal of that section by the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*), or
  - (e1) a warrant issued under section 181 (1) of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged failure to comply with a condition of an order referred to in that paragraph (to the extent the warrant continues in force

after the substitution of section 181 (1) by the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*, or

- (f) a warrant issued under section 172A (1) (b), 180 (1) (b) or 181 (1) of the *Crimes (Administration of Sentences) Act 1999*, or
- (f1) a warrant issued under section 107C or 108C of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged failure to comply with a condition of a community correction order or of a conditional release order, or
- (g) an order or warrant issued under section 98.

(2A) A person who is brought before a court on a warrant or order referred to in subsection (2) is not to be detained on remand in a detention centre until the proceedings to which the warrant or order relates are determined.

(3) A person who is of or above the age of 18 years, but under the age of 21 years, is not to be detained in a detention centre if—

(a) the person—

- (i) is currently in custody in a correctional centre, and
- (ii) has been in custody in a correctional centre for a period of, or periods totalling, more than 4 weeks, or

(b) an order under section 28(1) has previously been made in relation to the person's current period of custody in a correctional centre.

(4) Subsection (3) does not apply if the person is a juvenile inmate transferred to a detention centre by order under section 10(1).

(5) A person who is not to be detained in a detention centre because of subsection (3) is taken to be an inmate under the *Crimes (Administration of Sentences) Act 1999*.

## **10 Transfer of juvenile inmates from correctional centres to detention centres**

(1) The Minister administering the *Crimes (Administration of Sentences) Act 1999* may, by order in writing made with the consent of the Minister administering this Act, direct the transfer of a juvenile inmate from a correctional centre to a detention centre.

(2) The Commissioner of Corrective Services may, by order in writing made with the consent of the Secretary, direct the transfer of a juvenile inmate from a juvenile correctional centre to a detention centre.

(3) An order may not be made under subsection (2) in respect of a juvenile inmate unless he or she is an inmate pursuant to an order under section 28 whereby he or she has been transferred from a detention centre to a juvenile correctional centre.



- (4) When an inmate is transferred from a correctional centre to a detention centre pursuant to an order under this section—
  - (a) he or she ceases to be an inmate and becomes a person on remand or a person subject to control, as the case requires, and
  - (b) in the case of a person who becomes a person subject to control, the unexpired portion of the sentence or sentences of imprisonment to which he or she was subject when the order was made is taken to be the period for which he or she is required, under this Act, to be detained in a detention centre.

**11 Secretary to determine detention centre at which a person subject to control is to be detained**

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

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

- (1) A detention order with respect to a person is sufficient authority for—
  - (a) the conveyance of the person to, and
  - (b) the detention of the person in,the detention centre determined pursuant to section 11.
- (2) A person subject to control shall, while being conveyed to a detention centre pursuant to a detention order, be deemed to be in lawful custody.

**13 Transfers between detention centres**

- (1) The Secretary may, by order in writing, direct the transfer of a person on remand or a person subject to control from one detention centre to another.
- (2) Sections 11 and 12 apply to an order under this section in the same way as they apply to a detention order.

## **Division 2 Treatment of detainees**

### **14 Functions of the Secretary**

- (1) The Secretary shall ensure that adequate arrangements exist—
  - (a) to maintain the physical, psychological and emotional well-being of detainees,
  - (b) to promote the social, cultural and educational development of detainees,
  - (c) to maintain discipline and good order among detainees, and
  - (d) to facilitate the proper control and management of detention centres.
- (2) In exercising any function under this section in relation to a detainee who is a forensic patient within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, the Secretary must consult with, and have regard to the recommendations of, the Secretary of the Ministry of Health.

### **15 Detainees to be in custody of centre manager**

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

### **16 Separation of detainees**

- (1) The regulations may prescribe different classes of detainee for the purposes of this section.
- (2) While a regulation referred to in subsection (1) is in force, different classes of detainee shall, so far as is reasonably practicable, be detained separately from other classes of detainee in the same detention centre.
- (3) For the purpose of ensuring the security, safety and good order of a detention centre, the Secretary may direct that different detainees or groups of detainees be detained separately from other detainees.
- (4) While a direction referred to in subsection (3) is in force, the detainees or groups of detainees identified in the direction shall, so far as is reasonably practicable, be detained separately from other detainees in the same detention centre.
- (5) Detainees may be dealt with in accordance with this section despite anything to the contrary in the *Anti-Discrimination Act 1977*.

### **17 Private property**

- (1) Subject to the regulations, the centre manager of a detention centre may require a detainee—
  - (a) to surrender to the centre manager, or

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

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

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

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

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

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

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

(2) The centre manager must not allow in a detention centre any film classified RC, X 18+ or R 18+ under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

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

#### **18 Work to be performed by detainees**

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

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

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

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

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

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

## **19 Segregation of detainees for protection**

- (1) If the centre manager of a detention centre believes on reasonable grounds that a detainee should be segregated in order to protect the personal safety of that or any other detainee, or of any other person, the centre manager may, whether or not with the consent of the detainee, direct the segregation of the detainee, subject to the following conditions—
  - (a) the nature and duration of the segregation shall be reasonable having regard to the age, mental condition and development of the detainee,
  - (b) the duration of the segregation is to be as short as practicable and, in any case, must not exceed 3 hours except with the approval of the Secretary,
  - (c) the detainee shall be provided with some means of usefully occupying himself or herself,
  - (d) the physical environment of the place where the detainee is kept segregated shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre,
  - (e) the detainee shall be so segregated that at all times he or she is visible to, and can readily communicate with, a juvenile justice officer.
- (2) A detainee shall not be segregated under this section by way of punishment.
- (3) The centre manager of the detention centre shall make a record containing such particulars as may be prescribed by the regulations of any segregation effected under this section and shall forward copies of the record to the detainee and to the Secretary within 24 hours of the segregation.
- (4) A detainee shall not be segregated under this section unless the centre manager of the detention centre is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.
- (5) Nothing in this section limits the circumstances in which detainees may be detained separately pursuant to section 16.

## **20 Complaints of misbehaviour**

- (1) A complaint that a detainee is guilty of misbehaviour shall be made to such person, and in such manner, as may be prescribed by the regulations.
- (2) Subject to subsection (3), a complaint shall be heard and determined in accordance with such procedures as may be prescribed by the regulations.
- (3) The person by whom a complaint is being heard shall observe the rules of natural

justice and, without limiting the generality of those rules, shall ensure that—

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

## **21 Punishments for misbehaviour**

- (1) Subject to the regulations, the following punishments may be imposed on a detainee found guilty of misbehaviour—
- (a) caution,
  - (b) restriction from participation in sport or leisure activities,

- (c) additional duties for a period not exceeding 7 days, being duties of a constructive nature designed to promote the welfare of detainees,
  - (d) exclusion from, or confinement to, a place for a period not exceeding 12 hours or, in the case of a detainee of or over the age of 16 years, not exceeding 24 hours,
  - (e) in the case of misbehaviour declared by the regulations to be serious misbehaviour—extension, by a period that does not exceed 7 days, of the non-parole period of any detention order, or the term of any detention order without a non-parole period, to which the detainee is subject (other than a detention order whose term is cumulative and that has not commenced).
- (1A) A detainee may not be restricted from participation in sport or leisure activities for more than 7 days at a time except with the prior approval of the Secretary, whether given generally or in relation to a particular detainee.
- (2) Punishment of a kind referred to in subsection (1) (d) may only be imposed on a detainee subject to the following conditions—
- (a) the detainee shall be provided with some means of usefully occupying himself or herself,
  - (b) if the punishment consists of confinement to a place, the physical environment of the place where the detainee is confined shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre,
  - (c) the detainee shall at all times be visible to, and able to communicate readily with, a juvenile justice officer.
- (3) A punishment must not be imposed on a detainee so as to interfere with a visit to the detainee by—
- (a) a barrister or solicitor (or such other classes of persons as may be prescribed), or
  - (b) any other person, unless the centre manager is of the opinion that the security, safety or good order of the detention centre would be adversely affected if the visit were permitted.
- (4) A punishment under subsection (1) (e) may only be imposed, in accordance with this Act and the regulations, by the Children’s Court.
- (5) A penalty under subsection (1) (e) that extends the non-parole period of a person subject to control reduces by a corresponding period the remaining balance of the term of the detention order.
- (6) A punishment under subsection (1) (e) may extend a detainee’s period of detention beyond the end of the period of detention imposed by the court or the maximum

period of detention which could lawfully be imposed by the court for the offence concerned.

## **22 Prohibited punishments**

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

### **22A Prohibition on use of spit hoods**

- (1) Each of the following officers exercising functions under this Act must not use a spit hood in the exercise of the functions—
  - (a) a juvenile justice officer,
  - (b) a correctional officer,
  - (c) a police officer.

#### **Note—**

A contravention of this subsection may constitute an unauthorised or unreasonable use of force.

- (2) Subsection (1)—

(a) applies despite any other provision of this Act or another Act or law, and

(b) does not limit section 22.

(3) In this section—

***spit hood***—

(a) means a covering, however described, intended to be placed over a person's head to prevent the person from spitting on, or biting, another person, but

(b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

## **Division 3 Miscellaneous**

### **23 Persons on remand not to be granted leave**

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

### **23A Escorted absences**

- (1) Subject to the regulations, the Secretary may, by order in writing, permit a detainee to be absent from a detention centre—
  - (a) for the purpose of attending the funeral of a close relative, or
  - (b) for the purpose of visiting a close relative who is seriously ill, or
  - (c) for any other purpose that the Secretary thinks proper.
- (2) The centre manager of the detention centre shall direct a juvenile justice officer to take charge of the detainee while the detainee is so absent from the detention centre.
- (3) While the detainee is so absent from a detention centre the detainee shall be regarded as being in lawful custody.
- (4) The regulations may make provision for or with respect to—
  - (a) the circumstances in which an order may be made under this section, and



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

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

(1) Subject to the regulations the Secretary may, by order in writing—

- (a) grant a person subject to control leave to be absent from a detention centre for a purpose specified in subsection (1A),
- (b) remove a person subject to control from a detention centre and place the person in the care of such person as may be specified in the order, or
- (c) discharge a person subject to control from detention if the Secretary has made arrangements for the person to serve the period of detention by way of an intensive correction order or made suitable arrangements for the supervision of the person during the period of detention.

(1A) The purposes for which leave may be granted under subsection (1) (a) are as follows—

- (a) attending the funeral of a close relative,
- (b) visiting a close relative who is seriously ill,
- (c) applying for employment or being interviewed in relation to an application for employment,
- (d) engaging in employment of a kind specified in the order,
- (e) applying for enrolment in a course of education or vocational training or being interviewed in relation to an application for enrolment in such a course,
- (f) attending a course of education or vocational training at a place specified in the order,
- (g) any other purpose that the Secretary thinks proper, being a purpose which the Secretary considers to be directly associated with the welfare or rehabilitation of the person concerned.

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

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

- (2) An order under subsection (1) (b) or (c) may not be made in relation to a person who is a person subject to control pursuant to an order in force under section 10 of this Act or section 19 (1) of the *Children (Criminal Proceedings) Act 1987*.
- (3) An order under subsection (1) (c) may be made in relation to a person even if the person is already the subject of an order under subsection (1) (a) or (b).
- (4) An order under subsection (1) may be made subject to such conditions as the Secretary may specify in the order.
- (5) Such a condition shall remain in force—
  - (a) until the person to whom the order relates ceases to be a person subject to control, or
  - (b) for such shorter period as the Secretary may specify in the order.
- (6) The Secretary may, by further order in writing, revoke an order under this section.
- (7) (Repealed)

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

- (1) The conditions of leave that may be imposed under section 24 on a person subject to control may include either or both of the following—
  - (a) provisions prohibiting or restricting the person subject to control from associating with a specified person,
  - (b) provisions prohibiting or restricting the person subject to control from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended—
  - (a) while the person subject to control is in lawful custody, and
  - (b) while the person subject to control is under the immediate supervision of a public servant employed within the Department.
- (3) A person subject to control does not contravene a prohibition or restriction as to his or her association with a specified person—
  - (a) if the person subject to control does so in compliance with an order of a court, or
  - (b) if, having associated with the specified person unintentionally, the person subject to control immediately terminates the association.
- (4) A person subject to control does not contravene a requirement not to frequent or visit a specified place or district if the person does so in compliance with an order of a court.

(5) In this section, **associate with** means—

- (a) to be in company with, or
- (b) to communicate with by any means (including post, facsimile, telephone and email).

## **25 Removal to hospital of detainees**

(1) A detainee may—

- (a) by order of the Secretary, or
- (b) in cases of emergency—by order of the centre manager of the detention centre, be removed from the detention centre to a hospital, or to some other place specified in the order, for medical treatment.

(2) A detainee who is absent from a detention centre pursuant to an order under this section shall be deemed to be in lawful custody.

(3) The centre manager of the detention centre from which a detainee has been removed pursuant to an order under this section may direct a juvenile justice officer to take charge of the detainee while the detainee is absent from the detention centre.

(4) When—

- (a) the medical superintendent or other person in charge of a hospital certifies that a detainee who has been removed to the hospital may be discharged from the hospital,
- (b) a medical practitioner certifies that a detainee who has been removed to a place other than a hospital may be discharged from that place, or
- (c) an order under this section with respect to a detainee is revoked,

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

(5) (Repealed)

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

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

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

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

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

## 26A Use of Corrective Services staff to convey national security interest detainees

- (1) The Commissioner of Corrective Services may, at the request of the Secretary, authorise a correctional officer to convey a national security interest detainee to or from a detention centre.
- (2) A correctional officer who conveys a national security interest detainee in accordance with the Commissioner's authorisation has the following functions and immunities in relation to the detainee—
  - (a) the functions and immunities of a juvenile justice officer in relation to a detainee, and
  - (b) the functions and immunities of a correctional officer in relation to an inmate under the *Crimes (Administration of Sentences) Act 1999*.
- (3) In this section—

**national security interest detainee** means a detainee designated by the Secretary as a national security interest detainee under the regulations.

## 27 Medical attention

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

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

- (1) The Secretary may, by order in writing made with the consent of the Commissioner of Corrective Services, direct the transfer of an older detainee from a detention centre to a correctional centre.
- (1A) An order may be made under subsection (1) regardless of whether or where the detainee is currently in custody.
- (2) In the case of a detainee who is under the age of 18 years, an order may not be made under subsection (1) unless—
  - (a) he or she is a person on remand or a person subject to control by reason of an order in force under section 10, or
  - (b) he or she is a person on remand in relation to a serious children's indictable offence within the meaning of the *Children (Criminal Proceedings) Act 1987*, or
  - (c) he or she is a person subject to control by reason of an order in force under section 19 of the *Children (Criminal Proceedings) Act 1987*, or
  - (d) the Secretary is satisfied that the detainee's behaviour is or has been such as warrants the making of such an order.
- (2A) In the case of a detainee who is of or above the age of 18 years, but under the age of 21 years, an order may not be made under subsection (1) unless—
  - (a) the Children's Court makes an order authorising the making of such an order, or
  - (b) the detainee has been detained in a detention centre for at least 6 months and the Secretary has assessed that, having regard to all of the circumstances, it would be preferable for the detainee to be detained in a correctional centre, or
  - (c) the detainee is, or has previously been, detained as an inmate in a correctional centre (other than a juvenile correctional centre) for a period of, or periods totalling, more than 4 weeks, or
  - (d) the detainee applies to the Secretary in writing for the detainee's transfer to a correctional centre, or
  - (e) one or more of the circumstances referred to in subsection (2) applies in relation to the detainee.
- (2B) An order under subsection (1) with respect to a detainee who is under the age of 18 years may only be made for the purpose of transferring the detainee to a juvenile correctional centre.
- (2C) The limitations on the making of an order under subsection (1) that are specified in subsection (2) do not apply to a detainee in respect of whom an order under

subsection (1) has previously been made in relation to a current period of detention.

(2D) The limitations on the making of an order under subsection (1) that are specified in subsection (2A) do not apply to a detainee in respect of whom an order under subsection (1) has previously been made, whether in relation to a current period of detention or an earlier period of detention.

(3) When a detainee is transferred from a detention centre to a correctional centre pursuant to an order under this section—

(a) he or she ceases to be a detainee and becomes an inmate, and

(b) in the case of a detainee who, having been a person subject to control, becomes an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, the period for which he or she was required, under this Act, to be detained in a detention centre when the order was made is taken to be the unexpired portion of a sentence of imprisonment to which he or she is subject.

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

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

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

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

(2) In any criminal proceedings against a child to whom this section applies a court may remand the child to a correctional centre pending the commencement of the hearing of the proceedings or during any adjournment of the hearing, but only if—

(a) the person by whom the proceedings were commenced or the Secretary applies for such a remand, and

(b) the child is not released on bail under the *Bail Act 2013*, and

(c) the court is of the opinion that the child is not a suitable person for detention in a detention centre.

(3) The Children's Court may at any time on the application of the Secretary remand a child as referred to in subsection (2), subject to the requirements of paragraphs (b) and (c) of that subsection.

(4) Section 28E makes provision for the matters to be taken into account in deciding whether a person is suitable for detention in a detention centre.

**28B Certain children etc may be committed to correctional centres**

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

**28BA Certain persons to serve balance of detention order in correctional centre**

- (1) This section applies to a person who is sentenced to a term of imprisonment in respect of a detention centre offence that was committed when the person was of or above the age of 18 years.
- (2) When such a person is no longer required to serve his or her term of imprisonment in custody, the person must be kept in custody in a correctional centre—
  - (a) for the balance of any unexpired term of a detention order to which he or she is then subject, and
  - (b) for the remainder of any period of remand to which he or she is then subject or to which he or she becomes subject while in custody as referred to in paragraph (a).
- (3) The balance of the unexpired term of a detention order to which subsection (2) relates becomes the term of a sentence of imprisonment.
- (4)–(6) (Repealed)



- (7) This section extends to a person sentenced to a term of imprisonment for a detention centre offence before the commencement of this section, but does not apply if the person has served the whole of that sentence before that commencement.

**28C Meaning of “detention centre offence”**

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

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

**28D Review etc of sec 28B orders**

- (1) An order under section 28B must be reviewed at least once a month by the Minister administering the *Crimes (Administration of Sentences) Act 1999*.
- (2) An application for the variation or revocation of an order under section 28B may be made to the Children’s Court by or on behalf of—
  - (a) the person to whom the order relates, or
  - (b) the Minister administering the *Crimes (Administration of Sentences) Act 1999*.
- (3) An application under subsection (2) (b) may be made only if the Minister administering this Act consents.
- (4) In any proceedings on an application under this section, the person to whom the order relates is entitled—
  - (a) to appear in the proceedings and be heard, and
  - (b) to be represented by a barrister or solicitor or, by leave of the Children’s Court, by an agent.

**28E Consideration of suitability for detention centre**

- (1) In considering (for the purposes of section 28A, 28B, 28BA or 28D) whether a person is suitable for detention in a detention centre, a court must take into account the following—
  - (a) the nature of any offence which the person has committed or is charged with having committed,
  - (b) the likelihood of danger to the community should the person escape from a detention centre,

- (c) the likelihood of danger to staff or detainees if the person is detained at the detention centre concerned,
- (d) whether any previous behaviour of the person indicates that he or she is likely to create a serious management problem in a detention centre,
- (e) whether suitable accommodation is available for the person in a correctional centre.

(2) This section is not intended to prevent a court from taking into account other matters in considering the matter.

**28F Consent of Minister administering [Crimes \(Administration of Sentences\) Act 1999](#) required**

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

**29 (Repealed)**

**30 Discharge generally**

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

**31 Early discharge**

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

### **32 Termination of detention orders**

A detention order ceases to have effect—

- (a) in the case of a person who is discharged from detention pursuant to section 30 or 31—when the person is discharged,
- (b) in the case of a person who is discharged from detention by virtue of an order under section 24 (1) (c)—
  - (i) except as provided by subparagraph (ii)—when the person is discharged, or
  - (ii) if the person is discharged subject to conditions and the order is not subsequently revoked—at the end of the period for which the person would otherwise be required, under the detention order, to be detained in a detention centre,
- (c) in the case of a person the subject of an order in force under section 19 of the *Children (Criminal Proceedings) Act 1987* whereby a court has directed that part only of a term of imprisonment imposed on the person be served in a detention centre—when the person is transferred to a correctional centre in accordance with the order to serve the remainder of the term of imprisonment in a correctional centre, or
- (d) in the case of a person who is transferred to a correctional centre pursuant to section 28—when the person is so transferred.

### **32A Regulations**

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

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

property within a detention centre,

- (h) the forfeiture and disposal of a detainee's abandoned or unclaimed property (including money), or of unhygienic or otherwise dangerous property (including money) received from, or sent to, a detainee,
- (i) the seizure, forfeiture and disposal of property brought into a detention centre in contravention of this Act, the regulations or any other law,
- (j) visits to detainees, including—
  - (i) the days and times that visits may be allowed, and
  - (ii) the maximum number of persons who may visit a detainee at the same time, and
  - (iii) the classes of persons who may be prohibited from visiting detainees, and
  - (iv) the conditions that must be observed by persons intending to visit a detainee before such a visit will be allowed, and
  - (v) the procedures to be observed by visitors and detainees during visits, and
  - (vi) without limiting subparagraphs (iv) and (v), the identification of visitors (including the removal of face coverings within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) for that purpose),
- (k) the making and receiving of telephone calls by detainees,
- (l) the sending and receiving of letters and parcels by detainees, including the circumstances in which letters and parcels may be opened for inspection or confiscated,
- (m) the procedures to be followed by a detainee when applying for leave of absence, and the circumstances under which such leave may be granted,
- (n) the procedures to be followed by a detainee, and the facilities to be provided to a detainee, for the purpose of enabling the detainee to make a complaint to the centre manager of the detention centre or to any other person or body,
- (o) the observance by detainees of religious rites and obligations,
- (p) the acquisition by detainees of education and vocational training,
- (q) the provision to detainees of medical, surgical and dental treatment,
- (q1) the circumstances in which detainees may be confined to their rooms, and the periods for which they may be so confined,
- (q2) the review of directions given by the Secretary under section 16 (3),

- (r) the circumstances in which a body search may be conducted on a detainee, the procedures to be followed in conducting a body search and the persons by whom, or in whose presence, a body search is to be conducted,
- (s) the circumstances in which a juvenile justice officer may use force against a detainee, and the keeping of records of the occasions on which force is so used,
- (t) the equipment that may be used to restrain a detainee, and the circumstances in which, and the maximum periods for which, a detainee may be restrained by means of such equipment,
- (u) the circumstances in which a detainee may be tested for drugs or alcohol, the use of a non-invasive sample provided by, or taken from, a detainee for the purposes of a test for drugs or alcohol and the nature of the tests to be used,
- (v) analyses in connection with any such tests and the admission of certificates relating to the results of any such analyses as prima facie evidence in any proceedings for misbehaviour being dealt with under this Act,
- (w) the appointment of ministers of religion and other spiritual advisors for detention centres,
- (x) the functions of juvenile justice officers and other staff employed within a detention centre.

### **32AA Complaints guidelines**

- (1) The Secretary may issue guidelines about—
  - (a) the procedures to be followed by persons dealing with complaints, and
  - (b) the procedures to be followed by persons dealing with applications for the review of decisions on complaints.
- (2) Copies of the complaints guidelines must be made available for inspection by detainees and visitors at—
  - (a) each detention centre, and
  - (b) offices of the Department.

## **Part 4 Offences**

### **32AB Definition**

In this Part—

***remotely piloted aircraft*** means an unmanned airborne craft, including a drone or other remotely piloted, or otherwise controlled, airborne craft, part of a remotely piloted

aircraft and the remote control for a remotely piloted aircraft.

### **33 Escaping**

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

(2)-(4) (Repealed)

### **34 Helping person to escape**

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

### **35 Rescuing persons from lawful custody**

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

### **36 Permitting escapes**

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

### **37 Harboursing escapees**

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

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

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

### **37A Breaching conditions of leave, failure to return etc**

(1) A detainee who—

(a) is granted leave of absence by order under section 24 and fails, without reasonable excuse, to comply with any condition to which the order is subject or to return to the detention centre before the leave of absence expires, or

(b) fails, without reasonable excuse, to return to the detention centre pursuant to the requirements of section 25 (4) (relating to return from medical treatment),

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

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

**37B Trafficking in alcohol, drugs or other things**

A person who, without lawful authority—

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

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

**37C Unlawful entry into detention centre or communication with detainee**

A person who, without lawful authority—

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

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

**37CA Unlawful possession of remotely piloted aircraft**

- (1) A person who, without lawful excuse, has in the person's possession a remotely piloted aircraft in a detention centre is guilty of an offence and is liable to a penalty not exceeding 20 penalty units, or imprisonment for a period not exceeding 2 years, or both.
- (2) It is not an offence under this section if a person is in possession of a remotely piloted aircraft—
  - (a) for a purpose prescribed by the regulations, or
  - (b) with the authorisation of a person or a member of a class of persons prescribed by the regulations, or
  - (c) for any other reason prescribed by the regulations.

**37CB Possession or operation of remotely piloted aircraft in prohibited airspace**

- (1) A person who is in possession of a remotely piloted aircraft within prohibited airspace is guilty of an offence and is liable to a penalty not exceeding 20 penalty units, or imprisonment for a period not exceeding 2 years, or both.

- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that the possession was not for the purpose of threatening the good order or security of a detention centre.
- (3) A person who, without lawful excuse, operates or attempts to operate a remotely piloted aircraft within prohibited airspace in a way that threatens or is likely to threaten the good order or security of a detention centre, is guilty of an offence and is liable to a penalty not exceeding 20 penalty units, or imprisonment for a period not exceeding 2 years, or both.
- (4) It is not an offence under this section if a person is in possession of or operates or attempts to operate a remotely piloted aircraft—
  - (a) for a purpose prescribed by the regulations, or
  - (b) with the authorisation of a person, or a member of a class of persons, prescribed by the regulations, or
  - (c) for any other reason prescribed by the regulations.
- (5) In this section—

***operate a remotely piloted aircraft*** means fly or otherwise use a remotely piloted aircraft, including use a remotely piloted aircraft to photograph, film or otherwise make or transmit a visual or audio recording of the whole or any part of a detention centre, or a person, thing or activity on or at a detention centre.

***prohibited airspace*** means the airspace above any detention centre, and above the land in the immediate vicinity of a detention centre, at or below 400 feet above ground level.

### **37D (Repealed)**

## **Part 4A Administration**

### **Division 1 Health**

#### **37E Functions of Justice Health and Forensic Mental Health Network**

Justice Health and Forensic Mental Health Network, in addition to any other functions conferred on it by or under this or any other Act or law, has the following functions—

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



general hygiene of detainees.

**37F Chief Executive, Justice Health and Forensic Mental Health Network to have access to detention centres, detainees and medical records**

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

**37G Appointment of medical officers**

- (1) The Chief Executive, Justice Health and Forensic Mental Health Network, may appoint one or more registered medical practitioners as medical officers for a detention centre.
- (2) A registered medical practitioner may be appointed as a medical officer for one or more detention centres.
- (3) A medical officer is subject to the direction and control of the Chief Executive, Justice Health and Forensic Mental Health Network.
- (4) A medical officer for a detention centre is to attend the detention centre as regularly and frequently as is necessary to comply with the medical officer's statutory obligations.
- (5) The Chief Executive, Justice Health and Forensic Mental Health Network is to keep such statistical records, and furnish to the Secretary such returns, as the Secretary may direct in relation to health services provided to detainees.
- (6) A person who held office as a medical officer for a detention centre immediately before the commencement of this section is taken to hold office pursuant to an appointment under this section, and the appointment may be suspended or revoked accordingly.

**37H Delegation of functions of Chief Executive, Justice Health and Forensic Mental Health Network**

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

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

### 37I Definitions

(1) In this Division—

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

**breath analysing instrument** means any instrument approved by the Governor by order under the [Road Transport Act 2013](#) as such an instrument, that is, an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in the person's breath or blood.

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

**breath test** means a test—

- (a) that is designed to indicate the concentration of alcohol in a person's breath or blood, or whether a particular concentration of alcohol is or may be present in a person's breath or blood, and
- (b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the [Road Transport Act 2013](#).

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

**prohibited drug** has the same meaning as in the [Drug Misuse and Trafficking Act 1985](#).

(2) Subject to the regulations, section 109 (Measurement of alcohol concentrations) of the [Road Transport Act 2013](#) applies in relation to the measurement of the concentration of alcohol in a person's breath or blood for the purposes of this Division and the regulations in the same way as it applies for the purposes of that Act.

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

- (1) An authorised person may require any juvenile justice officer who is on duty, or who is present at the juvenile justice officer's place of work and about to go on duty—
  - (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or

- (b) to provide, or enable to be taken, a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,  
in accordance with the directions of the authorised person and the regulations.
- (2) The selection of a juvenile justice officer for testing under subsection (1) may be conducted on a random or targeted basis and, in particular, on the basis of the results of previous testing.
- (3) Without limiting the generality of subsection (1), if an incident occurs in which a person dies or is injured while in the custody of a juvenile justice officer, an authorised person may require any juvenile justice officer involved in the incident—
- (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
- (b) to provide, or enable to be taken, a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,  
in accordance with the directions of the authorised person and the regulations.
- (4) An authorised person may require the juvenile justice officer to remain on the premises where the test is to be conducted until the test is completed.
- (5) A requirement pursuant to subsection (3) to undergo a test or to provide a sample is to be made by the authorised person as soon as practicable after the incident occurs.

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

- (1) If a juvenile justice officer attends or is admitted to a hospital for examination or treatment because of an incident referred to in section 37J (3), an authorised person may require the juvenile justice officer to provide, or enable to be taken, a sample of blood or a non-invasive sample from the juvenile justice officer in accordance with the directions of a medical practitioner who attends the juvenile justice officer at the hospital.
- (2) Any such medical practitioner must take the sample if informed by an authorised person that the sample is required to be taken by the practitioner, but not a sample of blood if such a sample is taken under clause 11 of Schedule 3 to the [Road Transport Act 2013](#) instead.
- (3) If there is no medical practitioner present to attend the juvenile justice officer at the hospital, the sample is to be taken by a registered nurse who is attending the juvenile justice officer and who is accredited by a hospital to perform the sampling procedures.
- (4) Clauses 17, 18, 19 and 20 of Schedule 3 to the [Road Transport Act 2013](#) apply to any taking, or provision, of a sample of blood or a non-invasive sample under subsection (1) as if the sample were a sample of blood taken under clause 11 of Schedule 3 to

that Act.

- (5) Any sample taken under subsection (1) is to be dealt with, and a report on the analysis of the sample is to be provided, in accordance with the regulations.
- (6) Nothing in this section or the regulations derogates from the operation of Schedule 3 to the *Road Transport Act 2013* in its application to the taking of samples under clause 11 of that Schedule.

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

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

### **37M Regulations**

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

- (a) the appointment of authorised persons for the purposes of this Division,
- (b) the conduct of testing,
- (c) the taking of samples of blood or non-invasive samples,
- (d) the taking of a sample of blood at the choice of a juvenile justice officer for the juvenile justice officer to retain or arrange to be analysed (or both),
- (e) the provision of a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,
- (f) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
- (g) the accreditation of persons conducting analyses for the presence of prohibited drugs,

- (h) the procedure for the handling and analysis of samples of blood or non-invasive samples,
- (i) offences relating to interference with test results or the testing procedure,
- (j) the consequences of refusing to comply with a requirement of or under this Division,
- (k) the consequences for juvenile justice officers of testing positive for alcohol or prohibited drugs,
- (l) the evidentiary value and use of certificates relating to the analysis of a sample or the authorisation of persons,
- (m) the confidentiality of test results.

## **Part 4B Serious Young Offenders Review Panel**

### **37N Definitions**

In this Part—

**Secretary** means—

- (a) the Chief Executive, Juvenile Justice, or
- (b) if there is no such position in the Department—the Secretary of the Department.

**serious young offender** means a detainee who has been convicted of a serious children's indictable offence within the meaning of the [Children \(Criminal Proceedings\) Act 1987](#).

### **37O Constitution of Review Panel**

- (1) There is constituted by this Act the Serious Young Offenders Review Panel.
- (2) The Review Panel is to consist of at least 3, but not more than 6 members appointed by the Minister, of whom one is to be a Magistrate, acting Magistrate or retired Magistrate who is to be the Chairperson of the Review Panel.
- (3) Schedule 1A makes provision for the constitution and procedure of the Review Panel.

### **37P Functions of Review Panel**

- (1) The Review Panel has such functions as are conferred on it by or under this or any other Act or law, including the following functions—
  - (a) providing advice and making recommendations to the Secretary with respect to the classification of serious young offenders who are referred to the Review Panel by the Secretary,

(b) providing advice and making recommendations to the Minister or the Secretary with respect to—

(i) any matter relating to a detainee (including a serious young offender) that is referred to the Review Panel by the Minister or the Secretary, or

(ii) any other matter that may be prescribed by the regulations.

(2) The Minister or Secretary may refer a person or matter to the Review Panel individually or by reference to a class to which the person or matter belongs.

**37Q Matters to be considered by Review Panel**

(1) The Review Panel must, when exercising its functions in relation to a person who is a serious young offender or other detainee, consider each of the following to the extent that the Review Panel considers it to be relevant—

(a) the public interest, including the protection of the public,

(b) the nature and circumstances of any offence committed by the person or, in the case of a person on remand, alleged to have been committed by the person,

(c) the reasons and recommendations of the court that sentenced the person,

(d) the criminal history of the person,

(e) the time the person has served in custody and the time the person has yet to serve in custody,

(f) the person's conduct while in custody,

(g) the person's commitment to address offending behaviour, including the person's willingness to participate in rehabilitation programs and the success or otherwise of any such participation,

(h) the person's classification history,

(i) the position of and consequences to any victim of the person, including the victim's family,

(j) any submissions made by any victims of the person,

(k) the need to maintain public confidence in the administration of criminal justice,

(l) the rehabilitation of the person and the re-entry of the person into the community as a law-abiding citizen,

(m) the availability to the person of family, departmental and other support,

(n) any relevant reports about the person (including reports made by counsellors,

health practitioners or educational establishments) that are available to the Review Panel,

(o) any other matter that may be prescribed by the regulations.

(2) The Review Panel may also consider any other matter that it considers to be relevant.

(3) The regulations may specify how any matter is to be taken into consideration by the Review Panel under this section.

### **37R Annual reports**

A report of the Review Panel's activities during a year is to be included in the annual report of the Department.

### **37S Security of certain information**

Nothing in this Act or the regulations requires a person to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the person may, in the opinion of the Chairperson of the Review Panel—

(a) adversely affect the security, discipline or good order of a detention centre, or

(b) endanger the person or any other person, or

(c) jeopardise the conduct of any lawful investigation, or

(d) prejudice the public interest.

## **Part 4C Parole of detainees**

### **Division 1 Preliminary**

#### **38 Principles of Part**

For the purposes of this Part, the Children's Court or a person who has functions under this Part is to have regard to the following principles—

(a) the principles set out in section 6 of the *Children (Criminal Proceedings) Act 1987*,

(b) that the purpose of parole for children is to promote community safety, recognising that the rehabilitation and re-integration of children into the community may be highly relevant to that purpose.

#### **39 Definitions**

In this Part—

**detention order** includes a sentence of imprisonment.

**juvenile offender** means—

- (a) a person subject to control, or
- (b) a person who is serving a sentence of imprisonment and who was under the age of 18 years when the person committed the offence.

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

**statutory parole order**—see section 44.

#### 40 Application of Part

- (1) This Part applies to a juvenile offender if the offender is under the age of 18 years when the offender first becomes eligible for parole or at any later time when the offender is considered for parole.
- (2) This Part ceases to apply to a juvenile offender when the juvenile offender reaches the age of 18 years.
- (3) Despite subsection (2), this Part continues to apply to a juvenile offender if—
  - (a) the offender reaches the age of 18 years while on parole and the birthday occurs during the last 12 weeks of the parole period, or
  - (a1) (Repealed)
  - (b) the Secretary considers that it is appropriate that the offender, or a class of offenders of which the offender is a member, continue to be dealt with under this Part.
- (4) The provisions of the *Crimes (Administration of Sentences) Act 1999* in respect of parole apply to a juvenile offender if this Part does not apply to the offender.
- (5) For the purposes of subsection (4)—
  - (a) a reference in the *Crimes (Administration of Sentences) Act 1999* to a correctional centre includes a reference to a detention centre, and
  - (b) a reference in a parole order to a juvenile justice officer or supervision by an officer includes a reference to a community corrections officer or supervision by such an officer under that Act, and
  - (c) a parole order made under this Part for an offender is taken to be a parole order made by the State Parole Authority.

#### 41 Jurisdiction of Children's Court relating to parole

- (1) The Children's Court has jurisdiction to determine matters relating to parole, and conditions of parole, for juvenile offenders.



- (2) The jurisdiction of the Children's Court conferred by or under this Part is to be exercised by—
  - (a) the President of the Court, or
  - (b) a person appointed as a Children's Magistrate under section 7 of the *Children's Court Act 1987*.
- (3) This section does not prevent a bail decision under the *Bail Act 2013*, section 8 being dealt with under that Act.

#### **42 Eligibility for release on parole**

- (1) A juvenile offender may be released on parole in accordance with this Part.
- (2) A juvenile offender is eligible for release on parole only if—
  - (a) the offender is subject to at least 1 detention order for which a non-parole period has been set, and
  - (b) the offender has served the non-parole period of each such detention order and is not subject to any other detention order.
- (3) Nothing in this Part authorises the release of a juvenile offender who is required to be kept in custody in relation to an offence against a law of the Commonwealth.

#### **43 Parole order necessary for release**

A juvenile offender who is eligible for release on parole may not be released on parole except in accordance with a parole order directing the release of the offender.

### **Division 2 Making of parole orders**

#### **44 Statutory parole orders where detention order for period of 3 years or less**

- (1) A juvenile offender who is subject to a detention order for a period of 3 years or less, being an order for which a non-parole period has been set, is taken to be subject to a parole order (a **statutory parole order**) directing the release of the offender on parole at the end of the non-parole period.
- (2) A statutory parole order is conditional on the juvenile offender being eligible for release on parole in accordance with section 42 at the end of the non-parole period of the detention order.
- (3) If the juvenile offender is not eligible for release at that time, the offender is entitled to be released on parole as soon as the offender becomes so eligible.
- (4) This section does not authorise the release on parole of a juvenile offender who is also subject to a detention order for a period of more than 3 years for which a non-parole

period has been set unless the offender is otherwise entitled to be released under this Division.

**45 Parole orders where detention order for period of more than 3 years**

- (1) At least 60 days before the parole eligibility date for a juvenile offender who is subject to a detention order for a period of more than 3 years, the Children's Court must consider whether the offender should be released on parole.
- (2) Despite subsection (1), the Children's Court may defer consideration of a juvenile offender's case until not less than 21 days before the offender's parole eligibility date if it is of the opinion that—
  - (a) it is unable to complete its consideration because it has not been furnished with a report required to be made to it, or
  - (b) there are other relevant matters requiring further consideration.

**46 General duty of Children's Court relating to release of offenders**

- (1) The Children's Court must not make a parole order directing the release of a juvenile offender unless it is satisfied that it is in the interests of the safety of the community.
- (2) In considering whether it is in the interests of the safety of the community to release a juvenile offender, the Children's Court must have regard to the following principal matters relating to the promotion of community safety, while recognising that the rehabilitation and re-integration of the offender into the community may be highly relevant to the promotion of community safety—
  - (a) the risk to the safety of members of the community of releasing the offender on parole,
  - (b) whether the release of the offender on parole is likely to address the risk of the offender re-offending,
  - (c) the risk to community safety of releasing the offender at the end of the sentence without a period of supervised parole or at a later date with a shorter period of supervised parole.
- (3) In considering whether it is in the interests of the safety of the community to release a juvenile offender, the Children's Court must also have regard to the following matters—
  - (a) the nature and circumstances of the offence to which the offender's sentence relates,
  - (b) any relevant comments made by the sentencing court,
  - (c) the offender's criminal history,

- (d) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole,
  - (e) if applicable, whether the offender has failed to disclose the location of the remains of a victim,
  - (f) any report in relation to the granting of parole that has been prepared by or on behalf of the Department,
  - (g) any other report in relation to the granting of parole to the offender that has been prepared by or on behalf of any authority of the State,
  - (h) any other matters that the Children's Court considers to be relevant.
- (4) Without limiting subsection (3) (e) or (h), if the juvenile offender has provided post-sentence assistance, the Children's Court may have regard to the following—
- (a) the nature and extent of the assistance (including the reliability and value of any information or evidence provided by the offender),
  - (b) the degree to which the offender's willingness to provide assistance reflects the offender's progress to rehabilitation.
- (5) A report prepared by or on behalf of the Department for the purposes of subsection (3) must address the matters prescribed by the regulations for the purposes of this section.
- (6) The Children's Court is not required to consider the matters specified by this section in relation to a juvenile offender if it determines under Division 5 that it cannot make a parole order for the offender.
- (7) In this section—

***post-sentence assistance*** means assistance in the prevention, detection or investigation of, or in proceedings relating to, any offence provided by a juvenile offender to law enforcement authorities after the offender was sentenced and that was not taken into account or considered by the sentencing court.

#### **47 Parole orders in exceptional circumstances**

- (1) The Children's Court may make an order directing the release of a juvenile offender on parole who (but for this section) is not otherwise eligible for release on parole if the offender is dying or if the Court is satisfied that it is necessary to release the offender on parole because of exceptional extenuating circumstances.
- (2) Sections 44, 45 and 46 do not apply to a parole order under this section.

### **Division 3 Release under parole orders**

#### **48 Application of Division**

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

#### **49 Date of release on parole of serious offenders**

- (1) In determining when a juvenile offender who has been convicted of an offence involving violence should be released, the Children's Court must take into account the potential trauma to a victim and the victim's family if the offender is released on the anniversary of the commission of the offence against the victim.
- (2) The following offences are **offences involving violence** for the purposes of this section—
  - (a) a prescribed sexual offence within the meaning of the *Criminal Procedure Act 1986*,
  - (b) an offence under sections 27–30 of the *Crimes Act 1900* (attempts to murder),
  - (c) an offence under section 33 of the *Crimes Act 1900* (wounding etc with intent to do grievous bodily harm or resist arrest),
  - (d) an offence under section 35 (1) or (2) of the *Crimes Act 1900* (infliction of grievous bodily harm),
  - (e) an offence under sections 86–91 of the *Crimes Act 1900* (abduction or kidnapping),
  - (f) an offence under sections 94–98 of the *Crimes Act 1900* (robbery),
  - (g) an offence the elements of which include the commission of, or an intention to commit, an offence referred to in any of the above paragraphs,
  - (h) an offence that, at the time it was committed, was an offence involving violence for the purposes of this section,
  - (i) any other offence that involves an act of actual or threatened violence that is prescribed by the regulations for the purposes of this section.

#### **50 Release under parole order**

- (1) A juvenile offender's parole order is sufficient warrant for any person having custody of the offender to release the offender in accordance with the terms of the order.
- (2) A juvenile offender who is released on parole under this part may be released from custody—
  - (a) at any time on the parole day, or

- (b) at any time during the 24 hours immediately preceding the parole day, or
- (c) if the parole day is a Saturday, Sunday or public holiday—on the last day before the parole day that is not a Saturday, Sunday or public holiday.

(3) In this section—

**parole day** means the release day specified in the juvenile offender's parole order.

### **51 Sentence continues to run while juvenile offender on parole**

A juvenile offender who, while subject to a detention order, is released on parole in accordance with the terms of a parole order is taken to be subject to the detention order during the period—

- (a) that begins when the offender is released, and
- (b) that ends when the detention order expires or (if the parole order is sooner revoked) when the parole order is revoked.

## **Division 4 Conditions and obligations of parole orders**

### **52 Application of Division**

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

### **53 Conditions of parole generally**

- (1) A parole order is subject to the standard conditions imposed by this Part or the regulations.
- (2) The Children's Court may from time to time, by written notice given to the juvenile offender—
  - (a) impose additional conditions on a parole order, or
  - (b) vary or revoke any additional conditions imposed by it.
- (3) The conditions of a parole order for an offender subject to a detention order for a period of more than 3 years include conditions giving effect to a post-release report, prepared by the Department and adopted by the Children's Court (with or without changes), in relation to the juvenile offender.
- (4) In determining whether to impose a condition on, or vary or revoke a condition of, a parole order under this section or any other provision of this Act or the regulations, the Children's Court is to have regard to the following—
  - (a) whether the new condition, variation or revocation will assist in the management of a risk to community safety arising from the release of the juvenile offender on

parole,

- (b) the likely effect on any victim of the offender, and on any such victim's family, of the new condition, variation or revocation,
- (c) whether the new condition, variation or revocation will assist in the management of risk of breaches of parole by the offender,
- (d) whether the new condition, variation or revocation will assist in supporting participation by the offender in rehabilitation programs and managing re-integration into the community.

(5) Nothing in this Part permits the Children's Court—

- (a) to revoke or vary any standard conditions imposed by this Part or the regulations, or
- (b) to impose any additional conditions, or vary any additional conditions imposed by it, so as to be inconsistent with any standard conditions imposed by this Part or the regulations.

#### **54 Conditions of parole as to non-association and place restriction**

(1) The conditions to which a parole order is subject may include either or both of the following—

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

(2) A condition referred to in subsection (1) is suspended—

- (a) while the juvenile offender is in lawful custody (otherwise than while unescorted by a juvenile justice officer or correctional officer), and
- (b) while the offender is under the immediate supervision of a person employed in the Department.

(3) A juvenile offender does not contravene a prohibition or restriction as to his or her association with a specified person—

- (a) if the offender does so in compliance with an order of a court, or
- (b) if, having associated with the person unintentionally, the offender immediately terminates the association.

(4) A juvenile offender does not contravene a requirement not to frequent or visit a

specified place or district if the offender does so in compliance with an order of a court.

- (5) In this section, **associate with** means—
- (a) to be in company with, or
  - (b) to communicate with by any means (including by post, telephone, facsimile, email or other means of electronic communication).

#### **55 Conditions as to supervision**

- (1) It is a condition of a parole order that the juvenile offender is to be subject to supervision, as prescribed by the regulations.
- (2) The period of supervision is to be the period specified in the regulations, except as provided by subsection (3).
- (3) The period of supervision for a juvenile offender released under a parole order made under section 47 is the whole of the period for which the parole order is in force.
- (4) The condition imposed by subsection (1) does not apply to an offender in the circumstances (if any) prescribed by the regulations for the purposes of this subsection.

#### **56 Children's Court may exempt from supervision condition in exceptional circumstances**

- (1) The Children's Court may, by order in writing, exempt a juvenile offender for a specified period from the condition imposed by section 55 (1) if the Court is satisfied that the exceptional circumstances of the case justify the exemption.
- (2) The exemption may be unconditional or subject to conditions.
- (3) The order is to specify the purpose for which it is granted.
- (4) For the purposes of this Act, a failure to comply with a condition of the exemption is taken to be a failure to comply with the obligations of the parole order. This subsection does not limit the power of the Children's Court to revoke the exemption order.
- (5) A juvenile offender is not required to comply with the condition imposed under section 55 (1) if the offender is subject to an exemption.
- (6) The regulations may make provision for or with respect to the following—
  - (a) the periods for which an exemption may be ordered,
  - (b) notice to an offender of the making or revocation of an exemption order.

## 57 Suspension of certain parole conditions

- (1) This section applies to the following conditions of a parole order—
  - (a) a condition referred to in section 54 (1),
  - (b) a condition referred to in section 55 (1) (a **supervision condition**).
- (2) A juvenile justice officer may, by order in writing and subject to the regulations, suspend the application of a supervision condition to a juvenile offender for a period or periods or indefinitely.
- (3) A juvenile justice officer may, by order given orally or in writing and subject to the regulations, suspend the application of any other condition to which this section applies to a juvenile offender for a period or periods.
- (4) The suspension may be unconditional or subject to conditions.
- (5) For the purposes of this Act, a failure to comply with a condition of the suspension is taken to be a failure to comply with the obligations of the parole order. This subsection does not limit the power of the juvenile justice officer to revoke the suspension order.
- (6) The regulations may make provision for or with respect to the following—
  - (a) the periods for which a condition may be suspended,
  - (b) notice to a juvenile offender of the making or revocation of a suspension order,
  - (c) requiring the power to make, amend or revoke a suspension order to be exercised subject to and in accordance with any specified conditions.
- (7) This section does not apply to a condition imposed on an offender released on parole under section 47.

## Division 5 Parole orders for terrorism related offenders

### 58 Definitions

- (1) In this Division—

**terrorism offence** means a terrorism offence within the meaning of the *Crimes Act 1914* of the Commonwealth or an offence under section 310J of the *Crimes Act 1900*.

**terrorism related offender** means a juvenile offender to whom this Division applies.

**terrorist act** has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.
- (2) A reference in this Division to a juvenile offender engaging in, or inciting or assisting others to engage in, terrorist acts or violent extremism includes a reference to an



offender doing so in this State, in any other part of Australia or in any other country.

**59 Juvenile offenders to whom Division applies**

(1) This Division applies to a juvenile offender—

- (a) who is subject to a detention order for a terrorism offence, who has previously been convicted of a terrorism offence or who has been charged with a terrorism offence, or
- (b) who is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code, or
- (c) who has any associations with a terrorist organisation (within the meaning of Division 102 of Part 5.3 of the Commonwealth Criminal Code), or
- (d) who is making or has previously made any statement (or is carrying out or has previously carried out any activity) advocating support for any terrorist act or violent extremism, or
- (e) who has or previously had any personal or business association or other affiliation with any person, group of persons or organisation that is or was advocating support for any terrorist act or violent extremism.

(1A) Without limiting subsection (1) (d) and (e)—

- (a) advocating support for a terrorist act or violent extremism includes (but is not limited to) any of the following—
  - (i) making a pledge of loyalty to a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
  - (ii) using or displaying images or symbols associated with a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
  - (iii) making a threat of violence of a kind that is promoted by a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism, and
- (b) an association or other affiliation with a person, group of persons or organisation includes (but is not limited to) any of the following—
  - (i) networking or communicating with the person, group of persons or organisation,
  - (ii) using social media sites or any other websites to communicate with the person, group of persons or organisation.

- (2) This Division applies to a statutory parole order and any other parole order directing the release of a juvenile offender made by the Children's Court under this Part.

#### **60 Limitation on release on parole of terrorism related offenders**

- (1) The Children's Court must not make a parole order directing the release of a juvenile offender who is known to the Court to be a terrorism related offender unless—
  - (a) the Court is satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts or violent extremism, and
  - (b) the offender is otherwise eligible under this Act to be released on parole.
- (2) The grounds on which the Children's Court may revoke the parole order of a juvenile offender who is known to the Court to be a terrorism related offender include that the Court has become aware that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism.
- (3) The grounds on which the Children's Court may suspend the parole order of a juvenile offender who is known to the Court to be a terrorism related offender include that the Court has become aware that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism.
- (4) A statutory parole order directing the release of a juvenile offender who is known to the court as a terrorism related offender may be revoked by the Children's Court in accordance with this section at any time before or after the release of the offender on parole.

#### **61 General provisions relating to terrorism related offenders**

- (1) In deciding whether or not to release a terrorism related offender on parole, the Children's Court is to—
  - (a) have regard to any credible information it has on the risk that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism under the terms of the proposed parole order and in the future, and
  - (b) have regard in particular to whether the nature of any associations or affiliation that the offender has with any persons or groups advocating support for terrorist acts or violent extremism gives rise to any such risk.
- (2) The Children's Court may, for the purposes of this Division, have regard to advice received from the NSW Police Force or from any other public authority (whether of this or any other State or Territory or of the Commonwealth) established for law enforcement, security or anti-terrorist purposes.
- (3) This Division applies in addition to, and despite anything to the contrary in, any other provision of or made under this Part.

(4) However, this Division does not limit the operation of section 47.

## **Division 6 Revocation of parole orders and other sanctions**

### **62 Application of Division**

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

### **63 Revocation of parole before release**

- (1) The Children's Court may make an order revoking a parole order at any time before the offender to whom the order relates is released under the order, if the Court is satisfied that—
  - (a) the offender, if released, would pose a serious identifiable risk to the safety of the community and the risk cannot be sufficiently mitigated by directions from a juvenile justice officer or by changing the conditions of parole, or
  - (b) the offender, if released, would pose a serious and immediate risk to the offender's safety and the risk cannot be sufficiently mitigated by directions from a juvenile justice officer or by changing the conditions of parole, or
  - (c) the offender has requested the revocation, or
  - (d) in the case of a parole order made by the Court, there has been a substantial change to a matter considered by the Court in making the order, or
  - (e) any other circumstance prescribed by the regulations for the purpose of this section exists.
- (2) The Children's Court may revoke a parole order under this section on its own initiative or on the recommendation of a juvenile justice officer.

**Note—**

Division 5 sets out additional circumstances relating to the safety of the community in which the parole of individuals may be revoked before or after release if there are terrorism concerns.

- (3) The Attorney General, the Minister or the Secretary may request the Children's Court to revoke a parole order under this section and may make any submissions they think fit to support the request.

### **64 Actions by Secretary on non-compliance**

- (1) This section applies if the Secretary is satisfied that a juvenile offender has failed to comply with the offender's obligations under a parole order.
- (2) The Secretary may take any of the following actions—
  - (a) record the non-compliance and take no further action,

- (b) give an informal warning to the juvenile offender.
- (3) As an alternative to taking any such action, the Secretary can decide to refer the failure to comply to the Children's Court because of the serious nature of the non-compliance and may also make a recommendation as to the action that the Court may take in respect of the juvenile offender.
- (4) In deciding whether and what action should be taken in respect of the juvenile offender's failure to comply with obligations under the parole order, the Secretary may have regard to any action previously taken in respect of the failure to comply or any earlier failures to comply with the order.

### **65 Actions by Children's Court on non-compliance**

- (1) This section applies if the Children's Court is satisfied that a juvenile offender has failed to comply with the offender's obligations under a parole order.
- (2) The Children's Court may take any of the following actions—
  - (a) record the non-compliance and take no further action,
  - (b) give the juvenile offender a formal warning,
  - (c) impose additional conditions on the parole order,
  - (d) vary or revoke conditions of the parole order (other than conditions imposed by this Act or the regulations),
  - (e) make an order revoking the parole order.

#### **Note—**

The Children's Court may issue a notice requiring a juvenile offender to attend the Court for the purposes of this Part (see section 78 (1)).

### **66 Circumstances for revocation in addition to non-compliance**

- (1) The Children's Court may make an order revoking a parole order at any time after the release of a juvenile offender—
  - (a) if it is satisfied that the offender poses a serious and immediate risk to the safety of the community and that the risk cannot be sufficiently mitigated by directions from a juvenile justice officer or by changing the conditions of parole, or
  - (b) if it is satisfied that there is a serious and immediate risk that the offender will leave New South Wales in contravention of the conditions of the parole order and that the risk cannot be sufficiently mitigated by directions from a juvenile justice officer or by changing the conditions of parole, or
  - (c) in the case of an offender who has been granted parole under section 47 on the

grounds that the offender is dying or because of exceptional extenuating circumstances, if it is satisfied that those grounds or circumstances no longer exist, or

(d) if the offender fails to appear before the Children's Court when required to do so under this Part, or

(e) if the offender has applied for the order to be revoked.

(2) The Children's Court may make a parole revocation order on its own initiative or on the recommendation of the Secretary or a juvenile justice officer.

**Note—**

Division 5 sets out additional circumstances relating to the safety of the community in which the parole of individuals may be revoked if there are terrorism concerns.

**67 Hearings as to non-compliance and revocation**

(1) The Children's Court may, at any time, hold a hearing into whether a juvenile offender has failed to comply with the offender's obligations under a parole order or whether there are other grounds to revoke the order.

**Note—**

Division 8 sets out procedures for hearings.

(2) The Children's Court is not required to hold a hearing before it decides to revoke a parole order directing the release of a juvenile offender or to take any other action in relation to non-compliance with an order.

(3) If the Children's Court revokes a parole order without holding a hearing, the Court is required to hold a hearing within 28 days of giving notice to the juvenile offender of the revocation.

(4) If a hearing is held under subsection (3), the Children's Court may—

(a) vary the date on which a revocation order took effect, or

(b) rescind an earlier date, specified under section 68(1), on which a revocation order took effect, or

(c) rescind or confirm the revocation order.

(5) In making a decision under subsection (4), the Children's Court may take into account the behaviour of the juvenile offender while released on parole or after the revocation of the parole order.

**68 Effect of revocation order**

(1) An order revoking a parole order takes effect, or is taken to have effect, on the day on

which it is made or on any earlier day specified in the order.

- (2) The earliest day on which the revocation of a parole order on the grounds of non-compliance may be taken to have effect is the date of the last occasion on which there was a failure by the juvenile offender to comply with obligations under the parole order that constituted all or part of the grounds for the revocation.
- (3) If the juvenile offender is not taken into custody until after the day on which the order revoking the parole order takes effect, the term of the offender's detention order is, by this subsection, extended by the number of days the person was at large after the order took effect.
- (4) A juvenile offender is not at large for the purposes of subsection (3) if the juvenile offender is in custody for a separate charge.

**Note—**

Division 7 sets out rights and procedures for reconsideration where a parole order is revoked.

**69 Request by Attorney General, Minister, DPP to revoke parole order**

The Attorney General, the Minister or the Director of Public Prosecutions may request the Children's Court to exercise its powers to revoke a parole order in relation to a juvenile offender who is serving a sentence of imprisonment for a serious children's indictable offence on the ground that the order has been made on the basis of false, misleading or irrelevant information.

**70 Application to Supreme Court by juvenile offender**

- (1) If—
  - (a) the Children's Court revokes a parole order, and
  - (b) the juvenile offender to whom the parole order relates alleges that the order has been revoked on the basis of false, misleading or irrelevant information,the offender may, in accordance with rules of court, apply to the Supreme Court for a direction to be given to the Children's Court as to whether the information was false, misleading or irrelevant.
- (2) The Supreme Court may give any directions with respect to the information that it thinks fit.
- (3) An application under this section is to be considered by the Supreme Court if and only if it is satisfied that the application is not an abuse of process and that there appears to be sufficient evidence to support the application.
- (4) This section does not give the Supreme Court jurisdiction to consider the merits of the Children's Court's decision otherwise than on the grounds referred to in subsection

(1).

- (5) At the hearing or determination of an application under this section, a juvenile offender is not entitled to appear in person, except by leave of the Supreme Court.

## **Division 7 Reconsideration of parole**

### **71 Application of Division**

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

### **72 Reconsideration options after refusal of parole**

If the Children's Court refuses to make a parole order directing the release of a juvenile offender, the Court must specify one of the following—

- (a) a new date on which the offender will be eligible for parole,
- (b) a date for a hearing to reconsider whether or not the offender should be released on parole,
- (c) a date on or after which the offender may apply to the Court to be released on parole.

### **73 Reconsideration options after revocation of parole**

- (1) If the Children's Court revokes a parole order, the Court must do one of the following—
- (a) specify a new date on which the offender will be eligible for parole,
  - (b) specify a date for a hearing to reconsider whether or not the offender should be released on parole,
  - (c) specify a date on or after which the offender may apply to the Court to be released on parole,
  - (d) defer determining any of the matters referred to in paragraph (a), (b) or (c) for a specified period (not being for more than 3 months).
- (2) The Children's Court may defer determining any of those matters on 1 or more occasions.

### **74 Application for reconsideration of parole decision or revocation**

- (1) A juvenile offender may apply to the Children's Court for the granting of parole after a decision to refuse or revoke, or to defer a decision about, parole—
- (a) on or after a day specified by the Court for the making of any such application by the offender, or

- (b) at any time after the decision on the ground that—
  - (i) new information has become available that is relevant to the granting of parole or a condition of parole, or
  - (ii) the situation of the offender, or in relation to the granting of parole, has materially changed since the decision.
- (2) A juvenile offender may apply to the Children’s Court for the reconsideration of a decision about the conditions of parole at any time after the decision on the ground that—
  - (a) new information has become available that is relevant to the granting of parole or a condition of parole, or
  - (b) the situation of the offender, or in relation to the granting of parole, has materially changed since the decision.
- (3) An application under this section may be accompanied by written submissions in support of the application.
- (4) On an application being made, the Children’s Court—
  - (a) must set a date (occurring as soon as practicable) on which the hearing will be conducted, and
  - (b) must give notice to the juvenile offender of the date, time and place for the hearing.
- (5) The Children’s Court may refuse to consider an application made under subsection (1) (b) or (2) if it considers the application to be frivolous, vexatious or to have no prospect of success.

**75 Decisions on reconsideration**

- (1) On a hearing held in accordance with section 73(1)(b) or on the hearing of an application under section 74 (1), the Children’s Court may—
  - (a) defer the making of a decision as to whether or not the juvenile offender should be released on parole for a specified period (not being for more than 3 months), or
  - (b) confirm the decision being reconsidered, or
  - (c) make or reinstate a parole order for the juvenile offender, or
  - (d) rescind the revocation of a parole order, or
  - (e) vary the date on which the revocation of a parole order took effect, or
  - (f) rescind an earlier date, specified under section 68(1), on which the revocation of a



parole order took effect.

- (2) On the hearing of an application under section 74 (2), the Children's Court may—
  - (a) confirm the decision being reconsidered, or
  - (b) vary or revoke the conditions of parole or impose new conditions of parole.
- (3) The Children's Court may defer making a decision as to a juvenile offender on 1 or more occasions.

#### **76 Date of parole after reconsideration**

The period specified for release in a parole order directing the release of a juvenile offender made after an application under this Division is to be—

- (a) if the order is made before the offender's parole eligibility date, a period that begins on or after the eligibility date and ends no later than 35 days after that date, or
- (b) if the order is made after the offender's parole eligibility date, a period that begins on the date on which the order is made and ends no later than 35 days after that date.

### **Division 8 Procedure at hearings**

#### **77 Hearings**

- (1) The Children's Court may conduct hearings for the purposes of exercising its jurisdiction under this Part.
- (2) Hearings under this Part are to be held in accordance with section 10 of the *Children (Criminal Proceedings) Act 1987*, unless otherwise ordered by the Children's Court.

#### **78 Power to require attendance of juvenile offenders and witnesses and production of documents**

- (1) A Children's Magistrate may, at any time, by notice in writing given to a juvenile offender who has been released on parole require the offender to attend at a specified time and place for the purposes of this Part.
- (2) A Children's Magistrate may, by notice in writing given to a person, require the person on whom the notice is served—
  - (a) to appear before the Children's Court for the purpose of giving evidence in proceedings under this Part, or
  - (b) to produce to the Children's Court any document (including a document in the custody or under the control of the person and in the possession of or the property of the Crown) that is relevant to any proceedings of the Children's Court under this Part,

at a time, date and place specified in the instrument.

- (3) A Children's Magistrate may require a person who appears before the Children's Court to be sworn for the purpose of giving evidence on oath and may administer an oath accordingly.
- (4) If a document is produced to the Children's Court, the Court may take possession of the document for any period that it considers necessary for the purposes of the proceedings before it.
- (5) This section does not require a person to produce to the Children's Court any document the production of which the Minister certifies in writing—
  - (a) may endanger an offender or any other person, or
  - (b) may otherwise be contrary to the public interest.

### **79 Submissions by juvenile offenders at hearings**

- (1) At any hearing relating to a juvenile offender conducted by the Children's Court under this Part, the offender may make submissions to the Court as to whether or not the offender should be released on parole.
- (2) Submissions may be made orally or in writing and, if in writing, may be given to the Children's Court either before or at the hearing.

### **80 Rights of parties making submissions**

Any person (including the State) who is entitled under this Part to make submissions at a hearing to the Children's Court may, at the hearing—

- (a) be represented by an Australian legal practitioner or, with the consent of the Court, by any other person, and
- (b) call and examine any witness who attends, including any witness called by the Court, and
- (c) produce documents and exhibits to the Court, and
- (d) give evidence on oath, and
- (e) otherwise adduce, orally or in writing, to the Court any matters, and address the Court on any matters, that are relevant to the proceedings before the Court.

### **81 Adjournments**

The Children's Court may postpone or adjourn a hearing for any reason that seems appropriate to it.

## **82 Warrants**

- (1) A Children's Magistrate may issue a warrant for the arrest of a juvenile offender if—
  - (a) the offender fails to appear before the Children's Court after a notice has been issued to the offender under section 78, or
  - (b) the Court is of the opinion that the offender will not appear if given such a notice.
- (2) If the Children's Court revokes a parole order, a Children's Magistrate may issue a warrant committing the juvenile offender to a detention centre or correctional centre to serve the remainder of the detention order to which the order relates by way of full-time detention.
- (3) The Children's Court may, by order, recall or suspend any warrant that it has issued under this section.
- (4) A warrant for the arrest of a juvenile offender under this section is sufficient authority for any police officer to arrest, or to have custody of, the juvenile offender named in the warrant, to convey the offender to the place specified in the warrant and to deliver the offender into the custody of the Children's Court.
- (5) A warrant committing a juvenile offender to a detention centre or correctional centre under this section is sufficient authority—
  - (a) for any police officer to arrest, or to have custody of, the juvenile offender named in the warrant, to convey the offender to the place specified in the warrant and to deliver the offender into the custody of the person in charge of that place, and
  - (b) for the person in charge of that place to have custody of the offender named in the warrant for the remainder of the detention order to which the warrant relates.
- (6) The regulations may make provision for or with respect to the form of any warrants issued for the purposes of this section.

## **83 Witnesses' expenses**

A person who is required to appear or give evidence before the Children's Court under this Part (other than a juvenile offender in respect of whom the proceedings are being held) is entitled to be paid any allowances and expenses that the Minister may determine in respect of the person.

## **Division 9 Prerogative of mercy**

### **84 Governor may make parole order**

- (1) The Governor may, in exercising the prerogative of mercy, make a parole order in respect of a juvenile offender.

- (2) The parole order may be made whether or not the juvenile offender is eligible for release on parole.
- (3) A juvenile offender may be released on parole in accordance with a parole order made by the Governor.
- (4) The following provisions of this Part (the ***applied provisions***) apply to a parole order made by the Governor in the same way as they apply to a parole order made by the Children's Court—
  - (a) Division 1 (other than sections 41 and 42),
  - (b) Divisions 3, 4, 6, 7, 8 and 10 (other than sections 92 and 93).
- (5) Except to the extent the Governor otherwise directs, the Children's Court is to exercise functions under the applied provisions as if the parole order were a parole order made by the Children's Court.
- (6) The Governor may revoke or vary a direction given to the Children's Court under this section.

## **Division 10 Miscellaneous**

### **85 Application of Division**

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

### **86 Submissions by State**

- (1) The State may at any time make submissions to the Children's Court concerning the release on parole of—
  - (a) a serious offender, or
  - (b) a juvenile offender to whom Division 5 applies (whether or not a serious offender).

#### **Note—**

Section 71A of the [Terrorism \(High Risk Offenders\) Act 2017](#) authorises the use by the State of certain information obtained under that Act in proceedings for parole under this Act, but only with the consent of the provider of the information.

- (2) If the State makes any such submission before the Children's Court makes a final decision concerning the release of the offender, the Court must not make such a decision without taking the submission into account.
- (3) If the State makes any such submission after the Children's Court makes a final decision concerning the release of the offender, but before the offender is released, the Court must consider whether or not it should exercise its power under section 63

to revoke the relevant parole order.

- (4) The regulations may make provision for or with respect to submissions by the State under this section, including provisions relating to the application of this Part in connection with any such submission.
- (5) The powers of the State under this section may be exercised by the Secretary and by any other authority of the State.
- (6) In this section—

**serious offender** means a juvenile offender who belongs to a class of offenders prescribed by the regulations for the purposes of this section.

#### **86A Withdrawal of offender information provided under [Terrorism \(High Risk Offenders\) Act 2017](#)**

- (1) This section applies to proceedings for parole before the Children’s Court in which information is used under the authority given by section 71A of the [Terrorism \(High Risk Offenders\) Act 2017](#).

**Note—**

Section 71A of the [Terrorism \(High Risk Offenders\) Act 2017](#) authorises the use by the State of certain information obtained under that Act in proceedings for parole under this Act, but only with the consent of the provider of the information.

- (2) The Children’s Court must allow the State or a prescribed terrorism intelligence authority to withdraw the information from the consideration of the Children’s Court at any time before the proceedings are determined.
- (3) Any offender information that is withdrawn from the consideration of the Children’s Court must not be—
  - (a) used in making submissions for the State in the proceedings, or
  - (b) taken into consideration by the Children’s Court in determining the proceedings.
- (4) In this section—

**offender information** has the same meaning as in Part 5 of the [Terrorism \(High Risk Offenders\) Act 2017](#).

**prescribed terrorism intelligence authority** has the same meaning as in the [Terrorism \(High Risk Offenders\) Act 2017](#).

#### **87 Submissions by Secretary**

- (1) The Secretary may at any time make submissions to the Children’s Court concerning the release on parole of a juvenile offender.

- (2) If the Secretary makes a submission before the Children's Court makes a final decision concerning the release of the juvenile offender, the Court must not make the decision without taking the submission into account.
- (3) The regulations may make provision for or with respect to submissions by the Secretary under this section.

### **88 Functions may be exercised after order has expired**

The Children's Court may exercise any function under this Part in relation to a parole order, even if the order has expired.

### **89 Notice of parole decisions**

- (1) The Children's Court must give notice to a juvenile offender of a decision under this Part relating to the grant or revocation of parole, including any decision relating to the conditions of parole.
- (2) The notice is to contain any matters that are prescribed by the regulations for the purposes of this section.

### **90 Parole order not invalidated by failure to comply with procedural requirements**

A parole order is not invalid merely because of a failure by the Children's Court or another court to comply with any procedural requirement imposed by or under this Act.

### **91 Security of certain information**

- (1) (Repealed)
- (2) Nothing in this Act or the regulations requires a person to be provided with a copy of a report or another document, or part of the report or document, if its provision to the person may, in the opinion of a Children's Magistrate—
  - (a) adversely affect the security, discipline or good order of a detention centre or correctional centre, or
  - (b) endanger the person or any other person, or
  - (c) jeopardise the conduct of any lawful investigation, or
  - (d) prejudice the public interest, or
  - (e) adversely affect the supervision of any juvenile offender who has been released on parole.
- (3) Nothing in this Act or the regulations requires a person to be provided with information about the content of a report or other document, a copy of which is not required to be provided to a person by operation of subsection (2), if, in the opinion of

a Children's Magistrate—

- (a) not providing the information to the person is necessary in the public interest, and
- (b) the public interest outweighs any right to procedural fairness that may be denied by not providing the information.

(4) Subsection (2) does not permit the Minister to be denied access to any document held by the Children's Court.

## **92 Delegation of functions by Secretary**

The Secretary may delegate any of the Secretary's functions under this Part, other than this power of delegation, to any of the following persons—

- (a) a juvenile justice officer,
- (b) a correctional officer,
- (c) any other person, or a member of a class of persons, prescribed by the regulations.

## **93 Recommendations to Secretary**

- (1) The Children's Court may at any time make recommendations to the Secretary concerning the preparation of juvenile offenders for release on parole, either generally or in relation to any particular offender or class of offenders.
- (2) The Secretary must have regard to, but is not bound by, any such recommendation in exercising functions.

## **94 Service of notices**

- (1) Any notice required by or under this Part to be given to a person in respect of whom a parole order is in force, or any other person, may be given—
  - (a) personally, or
  - (b) by posting it, addressed to the person, to the address specified by the person for that purpose.
- (2) Any such notice may be served on a person in custody by giving the notice to the person in whose custody the person is held, and is to be dealt with in accordance with the regulations.
- (3) The means of giving a notice authorised by this section are in addition to any other means that are sufficient for valid service of the notice.

## **95 Records of decisions**

- (1) The Children's Court must record its reasons for the following decisions—

- (a) decisions that result in the granting or refusal of parole,
  - (b) decisions that result in the suspension or revocation of a parole order,
  - (c) decisions that result in the refusal to revoke a parole order following a submission by the State, the Attorney General, the Minister, the Director of Public Prosecutions or the Secretary under this Part or a recommendation by a juvenile justice officer.
- (2) In recording its reasons for a decision that a juvenile offender should or should not be released on parole, the Children’s Court must address the matters required to be taken into account by it under this Part when making the decision.
- (3) Copies of any records made under this section are to be supplied to the Minister, the Secretary, the juvenile offender concerned and the Department on request.

#### **96 Decision final**

Subject to this Act, a decision by the Children’s Court under this Part is final.

#### **97 Regulations**

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

- (a) the form, management, control, administration and supervision of parole orders,
- (b) the standard conditions to be imposed on parole orders,
- (c) the giving of notices to a juvenile offender,
- (d) the functions of juvenile justice officers under this Part,
- (e) the transfer of supervision of a person who has ceased to be a juvenile offender to whom this Part applies,
- (f) the notification of parole decisions by or on behalf of the Children’s Court to persons other than juvenile offenders.

### **Part 5 Miscellaneous**

#### **98 Arrest of escapees etc**

- (1) A juvenile justice officer or member of the police force may, without any authority other than that conferred by this subsection, arrest a detainee who has escaped from lawful custody.
- (2) The Secretary may make an order for the arrest of a person if satisfied that—
- (a) an order under section 24 applicable to the person has been revoked or (in the case of an order granting leave of absence) the person failed to return to the detention centre before the leave of absence expired, and in either case the



person is not at a detention centre, or

- (b) the person failed to return to the detention centre pursuant to the requirements of section 25 (4) (relating to return from medical treatment), and the person is not at a detention centre.
- (3) If a juvenile justice officer or member of the police force informs an authorised justice, on oath, that a person is absent from a detention centre otherwise than in accordance with this Act, the authorised justice may issue a warrant for the arrest of the person.
- (4) A juvenile justice officer or member of the police force may, pursuant to an order or warrant made or issued under subsection (2) or (3), arrest the person to whom the order or warrant relates.
- (5) Upon the arrest of a person under subsection (1) or (4), the person shall be conveyed to, and delivered into the custody of, the centre manager of a detention centre, to be detained in a detention centre in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be.
- (6) Nothing in this section prevents proceedings from being taken against a person in respect of an offence under Part 4.
- (7) This section is subject to section 9A.

**Note—**

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

**99 Extension of term of detention order following unlawful absence**

- (1) If a person subject to control is unlawfully absent from custody during the term of the detention order to which the person is subject—
  - (a) the term of the detention order, and
  - (b) if the absence occurs during a non-parole period of the term of the detention order—the non-parole period,are, by this section, extended by the period for which the person is unlawfully absent from custody.
- (2) For the purposes of this section, a person is unlawfully absent from custody if, and only if—
  - (a) the person has escaped from lawful custody, or
  - (b) the person has failed, without reasonable excuse, to return to a detention centre before the expiry of leave of absence granted to the person by order under section

24 (1) (a), or

(c) the person has failed, without reasonable excuse, to return to a detention centre following the revocation of an order that authorised the person's absence from the detention centre, or

(d) the person has failed, without reasonable excuse, to return to a detention centre in accordance with the requirements of section 25 (4) (relating to return from medical treatment).

(3) This section applies to an unlawful absence from custody regardless of whether the person has been charged with or found guilty of an offence in connection with the absence. The application of this section does not prevent proceedings being taken against the person for such an offence.

(4) This section does not apply to an unlawful absence from custody in respect of which the non-parole period or term of the person's detention order is extended by or under some other provision of this Act.

(5) For the purposes of this section, unlawful absence from custody does not include any period during which the person is in lawful custody, whether or not in relation to the detention order to which the person is subject.

(6) The date of commencement of any other detention order (the **later detention order**) that is to be served consecutively with a detention order whose term or non-parole period is extended by this section (the **earlier detention order**) is, by this subsection, postponed—

(a) if the later detention order commences at the end of the non-parole period of the earlier detention order—by the period for which the non-parole period of the earlier detention order is extended, or

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

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

(a) a written notice of the extension, and

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

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

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

## **100 Expediting trials and appeals**

- (1) The centre manager of a detention centre in which any person is detained for trial or appeal shall, at the end of each month, furnish returns containing the particulars prescribed by the regulations with respect to all persons so detained as at the end of that month.
- (2) Such a return shall be made—
  - (a) to the extent to which it relates to persons detained for trial in or appeal to the Supreme Court—to the Chief Justice of the Supreme Court,
  - (b) to the extent to which it relates to persons detained for trial in or appeal to the District Court—to the Chief Judge of the District Court, and
  - (c) to the extent to which it relates to persons detained for trial in the Children’s Court—to the Senior Children’s Magistrate.
- (3) With respect to a person the subject of such a return made—
  - (a) to the Chief Justice of the Supreme Court—any Judge of that Court,
  - (b) to the Chief Judge of the District Court—any Judge of that Court, or
  - (c) to the Senior Children’s Magistrate—any Children’s Magistrate or Magistrate under the *Children’s Court Act 1987*,may give such directions with respect to expediting the prosecution of the trial or appeal of the person as he or she thinks fit.

## **100A Victims Register**

- (1) There is to be a Victims Register.
- (2) There are to be recorded in the Victims Register the names of victims of juvenile offenders who have requested that they be given notice of the possible release of the juvenile offender concerned.
- (3) The Victims Register is to be kept by the government agency—
  - (a) prescribed by the regulations, or
  - (b) if the regulations do not prescribe an agency—designated by the Minister.
- (4) The regulations may make provision for or with respect to—
  - (a) the keeping of the Victims Register, and
  - (b) the manner in which a notice to victims may or must be given under this Act and the circumstances (if any) in which a notice need not be given, and

- (c) the identification of a person who is a victim for the purposes of this Act, including—
  - (i) the determination of the persons who are family representatives of a victim, and
  - (ii) the provision, by a person claiming to be a victim, of evidence of the person's identity and of the circumstances by which the person claims to be a victim.

(5) In this section—

**juvenile offender** means—

- (a) a person subject to control, or
- (b) a person who is serving a sentence of imprisonment and who was under the age of 18 years when the person committed the offence.

**victim**—

- (a) means—
  - (i) in relation to a juvenile offender—a victim of an offence for which the juvenile offender has been sentenced or of any offence taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*, or
  - (ii) if the victim referred to in subparagraph (i) is dead or under any incapacity or in such circumstances as may be prescribed by the regulations—a family representative of a victim, and
- (b) includes a person who suffers actual physical bodily harm, mental illness or nervous shock, or whose property is deliberately taken, destroyed or damaged, as a direct result of an act committed, or apparently committed, by the juvenile offender in the course of an offence.

#### **100B Notification to victims of parole consideration**

- (1) The government agency that keeps the Victims Register must give notice to any victim of a serious young offender, within the meaning of Part 4B, whose name is recorded in the Victims Register if—
  - (a) the serious young offender is due for consideration of whether or not the serious young offender should be released on parole, or
  - (b) the serious young offender is eligible for, or has applied for, release on parole.
- (2) The notice is to be given subject to and in accordance with the regulations.
- (3) Without limiting subsection (2), the notice must contain the following information—

- (a) the matter being notified,
  - (b) that the victim may make a submission to the Children's Court about the matter,
  - (c) the form that a submission may take,
  - (d) the period within which a submission must be made,
  - (e) that the Children's Court will consider a submission made before the end of that period.
- (4) The Children's Court must consider any submission made in accordance with this section.
- (5) The government agency that keeps the Victims Register is not required to give notice of a matter under this section if the matter required to be notified to the victim is included in any other requirement to give notice under this Act.
- (6) A failure by the government agency that keeps the Victims Register to comply with this section does not affect the validity of any decision of, or order made by, the Children's Court.

**100C Notification to victims of leave consideration**

- (1) The government agency that keeps the Victims Register must give notice to any victim of a serious young offender, within the meaning of Part 4B, whose name is recorded in the Victims Register if the Review Panel has been asked to provide advice or make a recommendation about whether or not the Secretary should make an order in relation to the serious young offender under section 24(1).
- (2) The notice is to be given subject to and in accordance with the regulations.
- (3) Without limiting subsection (2), the notice must contain the following information—
- (a) the matter being notified,
  - (b) that the victim may make a submission to the Review Panel about the matter,
  - (c) the form that a submission may take,
  - (d) the period within which a submission must be made,
  - (e) that the Review Panel will consider a submission made before the end of that period.
- (4) The Review Panel must consider any submission made in accordance with this section.
- (5) The government agency that keeps the Victims Register is not required to give notice

of a matter under this section if the matter required to be notified to the victim is included in any other requirement to give notice under this Act.

- (6) A failure by the government agency that keeps the Victims Register to comply with this section does not affect the validity of any advice given or recommendation made by the Review Panel.

**100D Information to be provided to victims**

- (1) The Secretary may, if requested to do so by a victim of a juvenile offender whose name is recorded in the Victims Register or at the Secretary's discretion, provide the following information to the victim—
- (a) any change to the juvenile offender's earliest possible release date,
  - (b) the discharge of the juvenile offender from detention,
  - (c) the general area of the juvenile offender's residence following the juvenile offender's discharge from detention,
  - (d) the transfer of a juvenile offender from a detention centre to a correctional centre or mental health facility,
  - (e) the death of the juvenile offender while serving a sentence or released on parole,
  - (f) the escape of the juvenile offender while serving a sentence,
  - (g) the failure of the juvenile offender to return from leave to be absent,
  - (h) the apprehension of the juvenile offender following the juvenile offender's escape while serving a sentence or failure to return from leave to be absent,
  - (i) a decision by the Secretary to grant the juvenile offender leave under section 24(1).
- (2) The government agency that keeps the Victims Register must give notice to a victim of a juvenile offender who is recorded in the Victims Register of the following matters relating to the juvenile offender—
- (a) that the Children's Court or the Governor has made a parole order releasing the juvenile offender on parole and the date of the release,
  - (b) that the juvenile offender is eligible for release on parole in accordance with a statutory parole order and the date of the release,
  - (c) any additional conditions placed on the parole order,
  - (d) that the conditions of the parole order have been changed, and particulars of the change,

(e) that the juvenile offender's parole has been revoked.

- (3) The information or notice is to be given in writing to the victim.
- (4) Notice of the revocation of an order is not required to be given under this section until any review of that order has been finally determined.
- (5) The Secretary and the government agency that keeps the Victims Register are not required to provide information or give notice under this section of any matter if the matter is included in any other requirement to give notice under this Act to the victim.

(6) In this section—

**juvenile offender** means—

- (a) a person subject to control, or
- (b) a person who is serving a sentence of imprisonment and who was under the age of 18 years when the person committed the offence.

**mental health facility** has the same meaning as it has in the [Mental Health Act 2007](#).

#### **101 Delegation of functions**

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

#### **101A Functions of centre manager**

- (1) A centre manager is, in the exercise of the centre manager's functions under this Act, subject to the direction and control of the Secretary.
- (2) A centre manager may delegate to any person any of the centre manager's functions, other than this power of delegation and other than any function delegated to the centre manager by the Secretary.

#### **102 Unlawful disclosure of information**

- (1) A person must not disclose any information obtained, or to which the person otherwise has or had access, in connection with the administration or execution of this

Act unless that disclosure is made—

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

Maximum penalty—10 penalty units or imprisonment for 12 months, or both.

- (2) Without limiting the disclosures that may fall within subsection (1) (e), a person makes a disclosure with lawful excuse for the purposes of that paragraph if the disclosure is—
  - (a) authorised by the Secretary, or
  - (b) in accordance with an official policy made by the Secretary for the purposes of this section.

#### **102A Authority to disclose information**

- (1) The Secretary may disclose information obtained by the Secretary, or to which the Secretary otherwise has or had access, in connection with the exercise of the Secretary's official functions under this or any other Act for any purpose prescribed by the regulations.
- (2) A regulation made under this section extends to information obtained before the commencement of the regulation unless the regulation otherwise provides.
- (3) The power to prescribe a purpose under subsection (1) does not imply that the Secretary may disclose information only for a prescribed purpose.
- (4) The authority to disclose information under this section applies despite the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.
- (5) The Minister is to consult with the Minister for Health before recommending the making of a regulation under subsection (1) that may result in the disclosure or use of health information (within the meaning of the *Health Records and Information Privacy Act 2002*).
- (6) A failure to comply with subsection (5) does not affect the validity of a regulation.



**102B Authority to exchange certain information**

- (1) The Secretary may enter into an arrangement (an **information sharing arrangement**) with the head of a relevant agency for the purpose of sharing or exchanging information that is held by the Department or the relevant agency.
- (2) Under an information sharing arrangement, each party to the arrangement is authorised—
  - (a) to request and receive prescribed information that is held by the other party to the arrangement, and
  - (b) to disclose prescribed information that is held by the party to the other party to the arrangement.
- (3) An information sharing arrangement extends to information obtained before the commencement of the regulation under which it is made unless the regulation otherwise provides.
- (4) The authority to disclose, request or receive information under this section applies despite the [Privacy and Personal Information Protection Act 1998](#) and the [Health Records and Information Privacy Act 2002](#).

- (5) In this section—

**law enforcement agency** means any of the following—

- (a) the NSW Police Force, or the police force of another State or a Territory,
- (b) the New South Wales Crime Commission,
- (c) the Australian Federal Police,
- (d) the Australian Crime Commission,
- (e) the Director of Public Prosecutions of New South Wales, of another State or a Territory or of the Commonwealth,
- (f) the Law Enforcement Conduct Commission,
- (g) the Independent Commission Against Corruption,
- (h) a person or body prescribed by the regulations for the purposes of this definition.

**prescribed information** means information prescribed by the regulations.

**relevant agency** means—

- (a) a law enforcement agency, or

- (b) an intelligence agency of an Australian jurisdiction, or
- (c) a government agency of a State or Territory that corresponds with the Department, or
- (d) a person or body prescribed by the regulations.

### **103 Evidentiary matters**

(1) A document that purports to be—

- (a) an order made under this Act, or
- (b) a copy of such an order,

is admissible in any proceedings under this Act and, in the absence of evidence to the contrary, is proof of the matters referred to in the document.

(2) In the absence of evidence to the contrary, the authority of the Minister, Secretary or a juvenile justice officer to exercise any function conferred or imposed on the Minister, Secretary or juvenile justice officer by or under this Act shall be presumed.

### **104 Proceedings for offences**

Subject to this Act, proceedings for an offence against this Act or the regulations shall be dealt with summarily before the Local Court.

### **105 Attendance of persons subject to control before courts and court officers**

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

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

**106 Admission to detention centre following arrest or apprehension for breach of bail**

- (1) A child who is arrested or apprehended under the *Bail Act 2013* for a failure, or threatened failure, to comply with a bail acknowledgment or bail condition, and who is to be detained before being taken before a court, must be detained in a detention centre rather than in a police station.
- (2) Despite subsection (1), the child may be detained in a police station before being taken before a court if it is impracticable for the child to be detained in a detention centre before being taken before the court.
- (3) A child who is detained in a police station under subsection (2) must, so far as is reasonably practicable, be detained separately from any adults detained there.
- (4) While a child is detained in a detention centre under this section, the child is taken to be a person on remand for the purposes of this Act.

**107 Royal prerogative of mercy preserved**

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

**108 Saving as to functions of Sheriff**

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

**109 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following—
  - (a) the control, management, good government, supervision and inspection of detention centres,
  - (b) the maintenance of the physical, psychological and emotional well-being of

detainees,

- (c) the promotion of the social, cultural and educational development of detainees,
- (d) the conduct and functions of persons employed in or about detention centres,
- (e) the constitution, functions, and procedures of the Review Panel.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

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

## **110 (Repealed)**

## **Schedule 1A Serious Young Offenders Review Panel**

(Section 370)

### **Part 1 Preliminary**

#### **1 Definitions**

In this Schedule—

**Chairperson** means the Chairperson of the Review Panel.

**Secretary** has the same meaning as it has in Part 4B.

**member** means any member of the Review Panel.

### **Part 2 Constitution**

#### **2 Chairperson and acting Chairperson**

- (1) Neither the appointment of a person who is a Magistrate as Chairperson or acting Chairperson, nor the person's service as Chairperson or acting Chairperson, affects—
  - (a) the person's tenure of the office of a Magistrate, or
  - (b) the person's rank, title, status, precedence, salary or other rights or privileges as

a holder of the office of a Magistrate.

- (2) A person who is a Magistrate may exercise the powers of a Magistrate even though the person is Chairperson or acting Chairperson.
- (3) Service of a Magistrate as Chairperson or acting Chairperson is, for all purposes, taken to be service as a Magistrate.

### **3 Acting members**

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be the member.
- (2) A person may be appointed to act in the office of a member only if the person is qualified to be appointed to the particular office.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause.
- (4) A person, while acting in the office of a member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence from the office of the member.

### **4 Nominee of Secretary to attend meetings**

- (1) A nominee of the Secretary is to attend meetings of the Review Panel but is not entitled to vote at any such meeting.
- (2) The function of the nominee is to provide advice to the Review Panel about policies and procedures of the Department and any other matter relating to the administration of juvenile justice.
- (3) The Review Panel is not to conduct a meeting in the absence of the nominee.

### **5 Term of office**

Subject to this Schedule and the regulations, a member holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **6 Part-time appointments**

Members hold office on a part-time basis.

## **7 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **8 Vacancy in office of member**

(1) The office of a member becomes vacant if the member—

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) ceases to hold the qualifications necessary for appointment to the office to which the member was appointed.

(2) The Minister may remove a member from office at any time.

## **9 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **10 Effect of certain other Acts**

(1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.

(2) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

### **11 Personal liability**

A matter or thing done or omitted to be done by the Review Panel, a member of the Review Panel or a person acting under the direction of the Review Panel does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## **Part 3 Procedure**

### **12 General procedure**

The procedure for the calling of meetings of the Review Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Secretary.

### **13 Quorum**

The quorum for a meeting of the Review Panel is a majority of its members for the time being.

### **14 Presiding member**

The Chairperson is to preside at a meeting of the Review Panel.

### **15 Voting**

- (1) A decision supported by a majority of the votes cast at a meeting of the Review Panel at which a quorum is present is the decision of the Review Panel.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **16 Transaction of business outside meetings or by telephone**

- (1) The Review Panel may, with the approval of the Secretary, transact any of its business by the circulation of papers among all the members of the Review Panel for the time being, and a resolution in writing approved in writing by a majority of the members is taken to be a decision of the Review Panel.
- (2) The Review Panel may, with the approval of the Secretary, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of—

- (a) the approval of a resolution under subclause (1), or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Review Panel.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Review Panel.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **Schedule 1 Savings and transitional provisions**

### **Part 1 Preliminary**

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

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

*Juvenile Offenders Legislation Amendment Act 2004*

*Children (Detention Centres) Amendment Act 2006*

*Children (Detention Centres) Amendment (Serious Young Offenders Review Panel) Act 2012*

any other Act that amends this Act

(2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

### **Part 2 Provisions consequent on enactment of **Children (Detention****



## Centres) Amendment Act 1988

### 1 Remand or transfer to prison

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

### 2 Orders for leave

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

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

### 3 Definition

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

### 4 Section 10 transfer orders

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

### 5 Section 28 transfer orders

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

### 6 Section 28BA applications

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

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

### **7 Definition**

In this Part, **the 2006 amending Act** means the [Children \(Detention Centres\) Amendment Act 2006](#).

### **8 Punishments for misbehaviour: section 21**

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

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

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

## **Part 5 Provision consequent on enactment of [Courts and Other Legislation Further Amendment Act 2013](#)**

### **10 Application of amendment concerning exchange of information**

Section 39B extends to information obtained before the commencement of that section.

## **Part 6 Provisions consequent on enactment of [Parole Legislation Amendment Act 2017](#)**

### **11 Definitions**

(1) In this Part—

**former parole provisions** means the provisions of the [Crimes \(Administration of Sentences\) Act 1999](#), as applied by section 29 of this Act before its repeal by the 2017 amending Act.

**the 2017 amending Act** means the [Parole Legislation Amendment Act 2017](#).

(2) Words and expressions used in this Part have the same meaning as in Part 4C of this Act.

### **12 General savings**

(1) Any act, matter or thing done or omitted to be done under any of the former parole provisions and having any force or effect immediately before the commencement of a provision of Part 4C of this Act that replaces that former parole provision is, on that commencement, taken to have been done or omitted to be done under the provision

of Part 4C of this Act.

(2) This clause does not apply—

- (a) to the extent that its application is inconsistent with any other provision of this Schedule or a provision of a regulation made under this Schedule, or
- (b) to the extent that its application would be inappropriate in a particular case.

### **13 Existing proceedings**

The former parole provisions continue to apply to or in respect of the following proceedings, if commenced before the repeal of the former parole provisions—

- (a) any proceedings before any court relating to the revocation of parole or a breach of parole,
- (b) any proceedings before the Supreme Court relating to the granting of parole.

### **14 Terrorism matters**

Division 5 of Part 4C, as inserted by the 2017 amending Act, extends to applications for parole orders pending on the commencement of that Division and to parole orders made before that commencement.

### **15 Existing parole orders for detention orders of 3 years or less**

- (1) A parole order made by a court in respect of a detention order for a period of 3 years or less, and in force before the commencement of section 44 as inserted by the 2017 amending Act, is taken to be a statutory parole order.
- (2) A condition imposed by a court on any such parole order is, for the purposes of this Act, taken to have been imposed by the Children's Court.

### **16 Existing applications for parole**

Section 46, as inserted by the 2017 amending Act, extends to the consideration of whether to make a parole order directing the release of a juvenile offender in any case in which the Children's Court was considering whether to make an order, but had not made a decision, before the commencement of that section.

### **17 Non-compliance with existing parole orders**

- (1) The amendments made to this Act by the 2017 amending Act extend to non-compliance with the obligations of a parole order by a juvenile offender that occurred before the commencement of Division 6 of Part 4C of this Act and to parole orders for juvenile offenders in force immediately before that commencement.
- (2) However, subclause (1) does not apply to any non-compliance that was finally dealt with under the former parole provisions before that commencement.

## **Part 7 Provisions consequent on enactment of [Justice Legislation Amendment Act \(No 3\) 2018](#)**

### **18 Parole supervision conditions**

The amendment to section 55 by the [Justice Legislation Amendment Act \(No 3\) 2018](#) applies to a parole order made on or after the commencement of the amendment.

### **19 Saving of information sharing arrangement**

An information sharing arrangement between the Secretary and the Commissioner of Fines Administration that was in force under section 102 immediately before its substitution by the [Justice Legislation Amendment Act \(No 3\) 2018](#) continues in force, despite that substitution, and is taken, on that substitution, to have been entered into under section 102B, as inserted by that Act.

## **Part 8 Provision consequent on enactment of [Justice Legislation Amendment Act \(No 2\) 2019](#)**

### **20 Application of amendment to existing parole orders**

The amendments made to section 40 by the [Justice Legislation Amendment Act \(No 2\) 2019](#) extend to a juvenile offender who, immediately before the commencement of the amendments, was subject to a parole order or statutory parole order.