

# Children (Detention Centres) Regulation 2015

[2015-474]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Medicines, Poisons and Therapeutic Goods Act 2022 No 73](#) (not commenced)
- **Staged repeal status**  
This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2025

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Children (Detention Centres) Regulation 2015



New South Wales

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# Children (Detention Centres) Regulation 2015



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Children (Detention Centres) Regulation 2015*.

### 2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Children (Detention Centres) Regulation 2010*, which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation—

**Aboriginal person** means a person who—

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

**approved laboratory** means a laboratory accredited by the New South Wales Ministry of Health and approved for the purposes of this Regulation by the Secretary.

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

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

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

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

**classified person** means—

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

**Commonwealth Ombudsman** means the Commonwealth Ombudsman appointed under the *Ombudsman Act 1976* of the Commonwealth.

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

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

**drug** means—

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

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

- (a) the New South Wales Ombudsman,
- (b) the Commonwealth Ombudsman,
- (c) the Judicial Commission,
- (d) the Australian Crime Commission,
- (e) the New South Wales Crime Commission,
- (f) the Independent Commission Against Corruption,
- (g) the Anti-Discrimination Board,
- (h) the Civil and Administrative Tribunal,
- (i) the Australian Human Rights Commission,

- (j) the Privacy Commissioner,
- (k) the Legal Aid Commission of New South Wales,
- (l) the Legal Services Commissioner,
- (m) an Official Visitor,
- (n) the Inspector of Custodial Services.

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

**field officer** means—

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

**government analyst** means—

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

**Justice Health officer** means—

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

**legal practitioner** means an Australian legal practitioner within the meaning of the [Legal Profession Uniform Law \(NSW\)](#).

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

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

**minister of religion** means—

- (a) a minister of religion (within the meaning of the [Marriage Act 1961](#) of the

Commonwealth) who is appointed or authorised by the diocesan or other authority of a religious denomination to minister to members of that denomination, or

- (b) a person who is appointed or authorised by a minister of religion referred to in paragraph (a) to minister to members of that denomination.

***national security interest detainee*** means a detainee who is designated as a national security interest detainee under clause 7A.

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

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

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

***prohibited goods*** means—

- (a) money, or
- (b) anything that, in the opinion of a centre manager or a juvenile justice officer authorised by a centre manager to open, inspect and read a letter or parcel sent to or by a detainee, is likely to prejudice the good order and security of a detention centre, or
- (c) any threatening, offensive, indecent, obscene or abusive written or pictorial matter, or
- (d) any offensive, indecent or obscene article, or
- (e) anything that, in the opinion of a centre manager or a juvenile justice officer authorised by a centre manager to open, inspect and read a letter or parcel sent to or by a detainee, is intended to facilitate, incite or be used in connection with any unlawful activity.

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

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

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

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

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

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

## **Part 2 Administration**

### **4 General routines**

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

### **5 Admission of detainees**

- (1) A detainee must not be admitted into a detention centre otherwise than in accordance with the Act.
- (2) As soon as practicable after a detainee has been admitted into a detention centre, the centre manager must ensure that the detainee is informed of the following matters—
  - (a) the general routine for the detention centre,
  - (b) the detainee's obligations as to behaviour and conduct,

- (c) the detainee's rights as to legal representation and as to appeal,
  - (d) the procedures for seeking information and for making complaints in accordance with the complaints guidelines,
  - (e) the normal days and hours for visiting,
  - (f) any other matter about which it is necessary for the detainee to be informed so as to enable the detainee to understand the detainee's rights and obligations and to adapt to living in the centre.
- (3) If practicable, a detainee must be informed of the matters by being given a document in which information relating to each of those matters is written.
- (4) A detainee who is being admitted to a detention centre must, on being required to do so by the centre manager, produce for inspection all property in the detainee's possession.
- (5) The centre manager may exercise the centre manager's functions under section 17 of the Act in respect of any property produced for inspection by the detainee.
- (6) The centre manager, in relation to any property that is surrendered under section 17 of the Act—
- (a) may make the property available for inspection by the police, if of the opinion that it may constitute evidence of an offence, or
  - (b) may direct that the property be destroyed, if of the opinion that it may constitute a threat to public health.

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

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

## **7 Classification of detainees**

- (1) For the purposes of section 16 (1) of the Act, the following classes of detainees are prescribed—
- (a) Class A1(o)—detainees who have been charged with or convicted of a relevant offence and who should therefore be detained within a secure physical barrier at all times unless, in the opinion of the Secretary, the detainee should be classed under paragraph (b), (c), (d), (e) or (f),

- (b) Class A1(b)—detainees who, in the opinion of the Secretary, are a high risk to security, safety and good order, and who should therefore be detained within a secure physical barrier at all times,
- (c) Class A2—detainees who, in the opinion of the Secretary, are a medium to high risk to security, safety and good order, and who should therefore be detained within a secure physical barrier at all times,
- (d) Class B1—detainees who, in the opinion of the Secretary, are a medium risk to security, safety and good order,
- (e) Class B2—detainees who, in the opinion of the Secretary, are a low to medium risk to security, safety and good order,
- (f) Class B3—detainees who, in the opinion of the Secretary, are a low risk to security, safety and good order,
- (g) Unclassified—all other detainees.

(2) In this clause—

**relevant offence** means any of the following—

- (a) murder,
- (b) manslaughter,
- (c) aggravated sexual assault in company under section 61JA of the *Crimes Act 1900*,
- (d) contaminating or threatening to contaminate goods with intent to cause public alarm or economic loss in aggravated circumstances under section 930 of the *Crimes Act 1900*,
- (e) aggravated sexual assault under section 61J of the *Crimes Act 1900* (except in circumstances referred to in subsection (2) (d) of that section),
- (f) 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*,
- (g) attempting to commit the offences referred to in paragraph (c) or (e) under section 344A of the *Crimes Act 1900*.

#### **7A Designation of national security interest detainees**

- (1) The Secretary may designate a detainee as a national security interest detainee if the Secretary is satisfied that—
  - (a) the detainee—
    - (i) has, at any time, been charged with or convicted of a terrorism offence, or



- (ii) is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code, or
  - (iii) has any associations with a terrorist organisation, or
  - (iv) 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
  - (v) 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, and
- (b) there is a risk that the detainee may engage in, or incite other persons to engage in, activities that constitute a serious threat to the peace, order or good government of the State or any other place.
- (1A) Without limiting subclause (1) (a) (iv) and (v)—
- (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) The Secretary may at any time revoke the designation of a detainee as a national security interest detainee.
- (3) The Secretary may refer a matter relating to the designation of a detainee as a national security interest detainee to the Review Panel.
- (4) In this clause—

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

**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*.

**terrorist act** has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.

**terrorist organisation** has the same meaning as it has in Division 102 of Part 5.3 of the Commonwealth Criminal Code.

#### **7B National security interest detainees may be detained separately from each other**

- (1) The Secretary may direct that a national security interest detainee be detained separately from any other national security interest detainees.
- (2) This clause does not authorise a national security interest detainee to be segregated under section 19 of the Act merely because the detainee is designated as a national security interest detainee.

#### **8 Health and medical attention**

- (1) Each detainee must be supplied with such medical and dental treatment as, in the opinion of a medical officer, dental officer or registered nurse, is necessary to promote and maintain the detainee's health and well-being.
- (2) Each detainee must, as soon as practicable after being admitted to a detention centre, be subjected to an examination by a medical officer or registered nurse for the purpose of determining the detainee's state of health and the results of the examination must be recorded.
- (3) If a medical officer or registered nurse recommends to the centre manager that the employment, diet, exercise or other treatment of a detainee should be varied or modified for reasons of health, the centre manager must carry the recommendation into effect in so far as is reasonably practicable.
- (4) If it is not reasonably practicable to carry the recommendation or any part of it into effect, the centre manager must report that fact to the Secretary.
- (5) The centre manager may isolate a detainee from other detainees if—
  - (a) the detainee is suffering from an infectious medical condition, and
  - (b) there is a risk of other detainees becoming infected with that condition, and
  - (c) the condition is, in the opinion of a medical officer or a registered nurse, sufficiently serious as to require the detainee's isolation.

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

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

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

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

## 11 Wearing of uniform clothing

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

## 11A Searching of detainees

- (1) For the purpose of ensuring the security, safety and good order of a detention centre, a juvenile justice officer may—
  - (a) search a detainee, and
  - (b) search a detainee's room and any property in the room.
- (2) A search of a detainee may be conducted by the following means only—
  - (a) running a hand-held metal detector (of a kind approved by the Secretary) over the detainee's outer garments,
  - (b) a pat-down,
  - (c) a partially clothed search,
  - (d) scanning with an X-ray scanning device.
- (3) A **pat-down** of a detainee means—
  - (a) searching the detainee by running the juvenile justice officer's hands over the detainee's outer garments, and
  - (b) examining anything worn or carried by the detainee that is conveniently removed by the detainee.
- (4) A **partially clothed search** of a detainee means any of the following—
  - (a) requiring the detainee to remove clothes from the top or bottom half of the detainee's body for examination of the clothes (and repeating the process for the other half of the detainee's body),
  - (b) visually examining the detainee's body,
  - (c) requiring the detainee to open the detainee's mouth to enable it to be visually examined,
  - (d) examining the detainee's removed clothes by touch.
- (5) However, a juvenile justice officer conducting a partially clothed search may not—

- (a) require the detainee to remove all of the detainee's clothes at once, or
  - (b) search the detainee's body cavities (other than the detainee's mouth), or
  - (c) examine the detainee's body by touch.
- (6) A search under this clause must be conducted with due regard to the dignity, self-respect and well-being of the detainee and as quickly as is reasonably practicable.
- (7) A search under this clause must be conducted in accordance with any directions of the Secretary about the conduct of searches under this clause, including in relation to the times at which and the circumstances in which a search may be conducted.
- (8) Except in the case of an emergency, a pat-down or partially clothed search of a detainee must be conducted—
- (a) by a person of the same sex as the detainee (or by a person of the sex chosen by the detainee in the case of a transgender or intersex detainee), and
  - (b) in the presence of another person (who, in the case of a partially clothed search, is able to observe the person conducting the search only and not the detainee).
- (9) A partially clothed search of a detainee must not be conducted as part of the general routine of a detention centre, except in the case of a detainee being admitted to a detention centre or returning to a detention centre following day leave or overnight leave.

## **12 Property**

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

permission of the centre manager.

- (6) The property of a detainee transferred from one detention centre to another must be transferred from the custody of the centre manager of the former detention centre to the custody of the centre manager of the new detention centre, together with such inventories and records as may be directed by the Secretary.

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

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

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

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

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

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

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

### **16 Disposal of property**

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

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

A record must be kept by the centre manager, in a manner approved by the Secretary, of any property of a detainee or visitor—

- (a) surrendered to, or taken and retained by, the centre manager, or
- (b) sent away by the centre manager, or
- (c) forfeited to the Crown, or
- (d) disposed of by the centre manager, or
- (e) destroyed by the centre manager, or
- (f) transferred by the centre manager to the custody of the centre manager of another detention centre, or
- (g) allowed to be retained by the detainee, or
- (h) returned to the detainee on discharge.

### **18 Education and training**

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

### **19 Access to programs**

- (1) The Secretary may provide the following programs in detention centres—
  - (a) vocational and education programs,
  - (b) psychological and social programs,
  - (c) recreational programs,
  - (d) alcohol and other drug rehabilitation programs,
  - (e) culture-specific programs,
  - (f) programs to assist detainees to address the offences for which they are detained.

- (2) If the Secretary establishes an incentive scheme to encourage detainees to participate in the programs provided, the centre manager of a detention centre is to ensure that the scheme is implemented at the centre.
- (3) In the exercise of a function under this clause, the Secretary must give special attention to the needs of detainees who have a disability and priority to those detainees who are at greatest risk of re-offending.

## **Part 3 Case plans for detainees**

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

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

### **21 Contents of case plan**

- (1) A detainee's case plan is to set out—
  - (a) the proposed actions to be taken to address the needs of the detainee in relation to the detainee's offending behaviour, and
  - (b) the time allocated to achieve the proposed actions, and
  - (c) the roles of those participating in the proposed actions.
- (2) The proposed actions set out in a case plan may include, without limitation, one or more of the following—
  - (a) the provision of services and programs in which the detainee should be encouraged to participate,
  - (b) the provision of health care services to the detainee,
  - (c) in the case of a detainee who appears to be at risk of self-harm, the preparation of a strategy to minimise the likelihood of self-harm occurring,
  - (d) in the case of a detainee who has a disability, the preparation of a strategy to minimise any disadvantage suffered by the detainee on account of the disability, particularly in relation to the detainee's suitability to engage in education or to carry out work,
  - (e) in the case of a detainee who is an Aboriginal person or Torres Strait Islander, the preparation of a strategy to accommodate his or her cultural needs,



(f) the provision of such pre-release and post-release assistance to the detainee as is relevant to his or her circumstances.

(3) In preparing a detainee's case plan, regard is to be had to the following matters—

- (a) the sentencing court's comments in relation to the detainee,
- (b) any assessment that has been made as to the detainee's physical or mental health,
- (c) the detainee's history.

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

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

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

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

# **Part 4 Visits and communications**

## **Division 1 Visits**

### **24 Visiting days and times**

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

### **25 Visits by relatives and friends**

- (1) A detainee may be visited by relatives and friends at least once immediately after admission and, with the permission of the centre manager, at such intervals after that

as the Secretary may determine for the centre in which the detainee is detained.

(2) The centre manager—

- (a) must have regard to the wishes of any parent or guardian of a detainee who is under 16 years of age in relation to the management of visits to the detainee, and
- (b) must, at all times, seek to encourage and facilitate visits to detainees by their relatives and friends.

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

- (1) A detainee may be visited by the detainee's legal practitioner, or by a clerk authorised in writing by the detainee's legal practitioner, to discuss or transact legal business (whether civil or criminal) in which the detainee has an interest.
- (2) Visits must take place during business hours, but must not otherwise be restricted in duration or number.
- (3) The centre manager may, if of the opinion that it is convenient and practicable to do so, permit a visit to take place outside business hours.

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

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

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

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

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

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

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

## **30 Other visits**

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

## **30A Visits to national security interest detainees**

- (1) A person may visit a national security interest detainee only if the person has been approved by the Secretary as a visitor to that detainee.
- (2) The Secretary may require a visitor to undergo a criminal record check before approving the person as a visitor to a national security interest detainee.
- (3) The Secretary is to ensure that any criminal record check of a visitor to a national security interest detainee is carried out as quickly as is practicable.
- (4) The Secretary may refuse to approve a person as a visitor to a national security interest detainee on the basis of a criminal record check or national security concerns.

### **Note—**

The Secretary may also ban a person from visiting a particular detention centre or detention centres generally or from visiting a particular detainee or detainees generally under clause 37.

- (5) The Secretary may revoke an approval of a person as a visitor to a national security interest detainee at any time.
- (6) This clause does not apply to a visit to a national security interest detainee by an exempt person or an officer of an exempt body.

## **31 Procedure for visits**

- (1) The centre manager may determine the procedure to be observed by detainees and visitors during visits.
- (2) A detainee may not be visited by any person unless that person has made arrangements with the centre manager for that purpose.
- (3) A visit to a detainee may, with the consent of the Secretary or the centre manager, take place outside the sight and hearing of a juvenile justice officer.
- (4) However, a visit to a detainee by a police officer in the course of the police officer's

official duties must take place within the sight and hearing of a juvenile justice officer.

- (5) The Secretary may permit a person—
- (a) to visit a detention centre, and
  - (b) to conduct research in the centre, and
  - (c) to be afforded facilities to interview, talk to and examine any detainee (but only with the detainee's consent) outside the sight and hearing of a juvenile justice officer.

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

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

Maximum penalty—5 penalty units.

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

may deliver to the detainee whom the person is authorised to visit any document or other thing that it is necessary to deliver for the purpose of the visit.

### **33 Refusal and termination of visits**

- (1) A detainee who is of or above the age of 16 years may refuse to receive a visitor.
- (2) The centre manager may, despite any other provision of this Division, refuse to permit a visit if, in the opinion of the centre manager, the security, safety or good order of the detention centre, or the health or well-being of a detainee, is likely to be adversely affected if the visit is permitted.
- (3) The centre manager may terminate a visit to a detainee and direct the visitor to leave the detention centre if, in the opinion of the centre manager—

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

Maximum penalty—5 penalty units.

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

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

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

female person at the direction of a juvenile justice officer.

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

**Note—**

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

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

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

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

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

### 35 Searching of visitors

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

Maximum penalty—5 penalty units.

- (3) A juvenile justice officer may confiscate, for the duration of the visit, anything that a visitor has brought into the detention centre (other than anything left in storage facilities as required by this clause).
- (4) Subclause (3) does not limit any other power that a juvenile justice officer may have

apart from this clause to seize or detain anything in the possession of a person, such as a power to seize any such thing from a person following the person's lawful arrest.

- (5) This clause does not apply to or in respect of any of the following visitors—
- (a) a police officer or correctional officer while acting in his or her official capacity,
  - (b) an officer of an exempt body,
  - (c) a diplomatic or consular representative of a foreign country.

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

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

Maximum penalty—20 penalty units.

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

### **37 Banning orders**

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

of detainees, in the detention centre.

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

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

- (1) A person in respect of whom a banning order is made may apply to the Secretary for a review of the decision to make the banning order.
- (2) The application is to be in writing and must be made within 28 days after the applicant is notified of the making of the banning order or within such further period as the Secretary may allow.
- (3) The review is to be conducted by the Secretary or a person authorised by the Secretary to conduct the review.
- (4) Following a review of the decision, the person conducting the review may—
  - (a) affirm the decision, or



(b) vary the decision, or

(c) set aside the decision.

(5) The person conducting the review must notify the applicant of the result of, and reasons for, the decision as soon as is practicable after making the decision.

## **Division 2 Letters and parcels**

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

(1) Except as otherwise provided by this Division—

(a) any letter or parcel sent to or by a detainee must not be opened, read or inspected otherwise than by the person to whom the letter or parcel is addressed, and

(b) any letter sent to or by a detainee must not be censored.

(2) A detainee may send letters and parcels to, and receive letters and parcels from, persons who are not detainees.

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

(1) A centre manager or a juvenile justice officer authorised by the centre manager may open, inspect and read a letter or parcel sent to or by a detainee and, if it contains prohibited goods, may confiscate the letter or parcel and its contents and deal with them in accordance with the directions of the Secretary.

(1A) The centre manager of a detention centre must open, inspect and read any letter or parcel sent to or by a national security interest detainee and, if it contains prohibited goods, may confiscate the letter or parcel and its contents and deal with them in accordance with the directions of the Secretary.

(2) The detainee is to be informed of the confiscation of any letter, parcel or prohibited goods.

(3) A centre manager may direct that any written or pictorial matter contained in a letter or parcel opened, inspected or read under this clause be copied before the letter or parcel containing the matter is delivered to the addressee.

(4) The direction may be given only if the centre manager or juvenile justice officer is of the opinion that the written or pictorial matter to be copied—

(a) contains anything likely to prejudice the good order and security of the centre, or

(b) is threatening, offensive, indecent, obscene or abusive.

(5) This clause does not apply to any letter or parcel addressed to, or received from, an

exempt body or exempt person.

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

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

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

- (1) A detainee may—
  - (a) communicate by letter with a detainee who is detained in another detention centre, but only with the authority of the centre managers of both centres, and
  - (b) communicate by letter with an inmate detained in a correctional centre, but only with the authority of the general manager of the correctional centre and the centre manager of the detention centre.
- (2) Despite subclause (1), a national security interest detainee must not communicate by letter with—
  - (a) a national security interest detainee in another detention centre, or

- (b) a category AA, category 5 or national security interest inmate in a correctional centre.

### **Division 3 Telephone communications**

#### **43 Telephone calls generally**

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

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

- (1) The Secretary may cause an officer authorised for the purpose to monitor one or more of a detainee’s telephone calls.
- (1A) The Secretary must arrange for an officer authorised for the purpose to monitor all telephone calls made by a national security interest detainee (other than communications referred to in subclause (4)).
- (2) The Secretary may determine the procedure for monitoring telephone calls.
- (3) The Secretary must ensure that procedures are in place so that both the maker and the recipient of a telephone call that is monitored are informed that the call is being monitored before the call is made or at the start of the call.

**Note—**

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

- (4) Communications made during a telephone call between a detainee and any of the following persons or bodies are not to be monitored—
- (a) an exempt body,
  - (b) the detainee’s legal practitioner,
  - (c) the Health Care Complaints Commission,
  - (d) the Mental Health Helpline,
  - (e) the Oral Health Hotline.
- (5) In this clause, **monitor** means listen to or record communications made during a telephone call.

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

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

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

#### **46 Requests to speak to centre manager or other juvenile justice officer**

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

## Part 5 Complaints

### 47 Definitions

In this Part—

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

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

**employee of the Department** does not include the centre manager or any other staff member of a detention centre.

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

**representative** of a detainee means—

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

**support person** for a detainee means—

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

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

### 48 Who may make a complaint

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

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

- (1) A complaint may be addressed, either orally or in writing, to a prescribed person.
- (2) A written complaint addressed to a prescribed person may be lodged with that person or with any other prescribed person.
- (3) A written complaint addressed to a prescribed person and lodged with another prescribed person is to be immediately referred to the person to whom the complaint is addressed.
- (4) If a detainee requests a prescribed person to do so, the prescribed person must ensure that all reasonable steps are taken to provide assistance to the detainee in making a complaint under this Part, including, where necessary, the provision of an interpreter.
- (5) Except in such circumstances as may be provided by the complaints guidelines, an envelope purporting to contain a complaint must not be opened or its contents inspected or read by anyone other than the person to whom it is addressed.
- (6) For the purposes of this clause only, a complaint addressed to the Manager, Court Logistics, Classification and Placements is to be treated as a complaint addressed to the centre manager of a detention centre.
- (7) In this clause, **prescribed person** means—
  - (a) a centre manager or any other juvenile justice officer, and
  - (b) the Secretary or any other employee of the Department.

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

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

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

- (1) The referee for a complaint may conduct a hearing into the matters raised by the complaint.
- (2) For the purposes of any such hearing, the referee—

- (a) may invite any person to make representations in relation to the complaint, and
  - (b) if the complaint makes allegations against any other person, must invite the complainant and that other person to make representations in support of, or in reply to, the allegations.
- (3) A person who is invited to make representations may decline to do so.
- (4) Subject to this Part, the procedures for dealing with a complaint are to be as set out in the complaints guidelines.

## **52 Representation of complainants**

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

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

- (1) As soon as practicable after receiving a complaint, the referee must notify the complainant of the following—
- (a) the fact that the referee is dealing with the complaint,
  - (b) how the referee may be contacted about the complaint,
  - (c) the procedures to be followed by the referee in dealing with the complaint (including whether the complainant will be invited to appear before the referee to make representations in connection with the complaint),
  - (d) when the complainant can expect a decision on the complaint.

- (2) As soon as practicable after making a decision on a complaint, the referee must notify the complainant—
  - (a) of the decision that has been made, and
  - (b) of the action (if any) that the complainant can expect to occur as a consequence of the decision.
- (3) As far as is practicable, all such information is to be communicated in such a way so as to be readily understood by the complainant.
- (4) The complaints guidelines may specify classes of complaint (being complaints of a trivial nature) in respect of which notice under this clause need not be given or may be given orally.

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

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

#### **55 Complaints registers**

- (1) A complaints register is to be kept—
  - (a) by the Secretary (in relation to complaints made to the Secretary or other employee of the Department), and
  - (b) by the centre manager of each detention centre (in relation to complaints made to the centre manager or to staff members of the centre), and
  - (c) by the Manager, Court Logistics, Classification and Placement (in relation to complaints made to the Manager).
- (2) The complaints registers are to be available for inspection by the New South Wales Ombudsman.
- (3) The complaints register kept by the centre manager of a detention centre is also to be available for inspection by the Official Visitor for the centre and the Inspector of Custodial Services.



## 56 Information to be recorded in complaints register

- (1) The following information is to be recorded in the relevant complaints register in respect of each complaint—
  - (a) the date on which the complaint was made,
  - (b) the name of the complainant,
  - (c) the substance of the complaint,
  - (d) the name of the referee for the complaint,
  - (e) brief particulars of the procedures followed by the referee in dealing with the complaint,
  - (f) the decision that was made on the complaint,
  - (g) the date on which the complainant was informed of the referee's decision on the complaint,
  - (h) if the complaint was not disposed of within 21 days after it was made, the reason why it was not disposed of within that time,
  - (i) such other information in relation to the complaint as the complaints guidelines require to be recorded in the register.
- (2) The complaints guidelines may specify classes of complaint (being complaints of a trivial nature) in respect of which information is not required to be recorded in the relevant complaints register.

## 57 (Repealed)

## Part 6 Leave

### 58 Definitions

In this Part—

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

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

- (a) starting on the commencement of the control order or sentence of imprisonment under which the person is detained (or, if the person is subject to more than one control order or sentence of imprisonment, the first of them), and
- (b) ending on the person's earliest release date.

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

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

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

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

In deciding whether or not to grant day leave or overnight leave to a person subject to control, the Secretary must have regard to the following matters—

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

## 60 Day leave

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

one quarter of the person's detention period.

- (2) Despite subclause (1), the Secretary may grant day leave to a person subject to control at any time if the Secretary is satisfied that exceptional circumstances justify the grant of day leave.

**Note—**

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

## **61 Overnight leave**

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

**Note—**

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

## **Part 7 Maintenance of order**

### **Division 1 Order generally**

#### **62 Definitions**

In this Division—

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

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

### **63 Order generally**

- (1) Juvenile justice officers must seek to influence detainees through example and leadership and must seek to enlist their willing co-operation.
- (2) At all times, the treatment of detainees must be such as to encourage their self-respect and sense of personal responsibility.
- (3) A juvenile justice officer is not to engage in behaviour toward a detainee—
  - (a) that is intimidating, humiliating, demeaning, threatening or oppressive, or
  - (b) that otherwise constitutes an abuse of the officer's authority.

### **64 Use of dogs to assist in detection of prohibited goods**

If a juvenile justice officer is authorised to search for prohibited goods in a detention centre, the officer is entitled to use a dog to assist in the detection of prohibited goods in the detention centre.

### **65 Use of force**

- (1) A juvenile justice officer must not use force against any person in a detention centre except for the following purposes—
  - (a) to prevent a detainee from injuring himself or herself,
  - (b) to protect the officer or other persons from attack or harm,
  - (c) to prevent a detainee from inflicting serious damage to property,
  - (d) to prevent a detainee from escaping,
  - (e) to prevent a person from entering a detention centre by force,
  - (f) to search a detainee in circumstances in which the detainee refuses to submit to being searched,

**Note—**

All searches of a detainee must be conducted in accordance with clause 11A.

- (g) to seize any dangerous or harmful article or substance that is in the possession of a detainee,
- (h) to prevent or quell a riot or other disturbance,
- (i) to protect a dog being used to assist in the detection of prohibited goods in a detention centre from attack or harm,
- (j) to allow a medical practitioner to carry out medical treatment on a detainee in accordance with section 27 of the Act.

- (2) Despite subclause (1), a juvenile justice officer may use force in order to move a detainee who refuses to move from one location to another in accordance with an order of that officer, but only if the officer first gives a warning to the detainee of the consequences of failing to comply with the order.
- (3) In dealing with a detainee, a juvenile justice officer must use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the detainee is to be avoided if at all possible.

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

- (1) As soon as practicable after force is used by a juvenile justice officer against a person, a report must be furnished to the centre manager by each officer involved in the use of force.
- (2) The report—
  - (a) must be in writing, and
  - (b) must specify the name of each person who has been subjected to force and the name of each officer who was involved in the use of force, and
  - (c) must specify the location where the use of force occurred, and
  - (d) must describe the nature of the force used and the purpose for which, or the circumstances in which, force was used, and
  - (e) must be signed by the officer making the report.
- (3) This clause does not apply in respect of—
  - (a) a threat of the use of force, or
  - (b) the use of an instrument of restraint in circumstances where—
    - (i) the person is restrained for the purposes of being moved from one location to another, and
    - (ii) the move and use of the restraint is required to be noted administratively, or
  - (c) the use of a riot shield as personal protection (provided the shield does not come into contact with another person).

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

### **67 Breath testing whether or not alcohol use suspected**

- (1) A juvenile justice officer or other person having supervision of a detainee may direct the detainee to undergo a breath test for the purpose of testing for the presence of alcohol or another intoxicating substance.

- (2) A detainee may be directed to undergo a breath test under this clause even though the detainee concerned may not be reasonably suspected of being under the influence of alcohol or another intoxicating substance.

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

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

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

is admissible in evidence of the facts so certified.

- (2) In any such proceedings, evidence of—

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

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

**69 Urine or saliva sample where drug use suspected**

- (1) On forming a suspicion that a detainee—

- (a) has been administered (whether by himself or herself or otherwise) with a drug, or
- (b) is under the influence of a drug,

a juvenile justice officer may require the detainee to supply a sample of urine or saliva or both for testing and give directions as to how the sample is to be supplied.

- (2) The directions may require the detainee to comply with directions given by a juvenile justice officer as to how the sample is to be supplied.
- (3) A urine or saliva test must be carried out by a government analyst.
- (4) In any proceedings for misbehaviour that are being dealt with by the centre manager, being proceedings in which it is alleged that a urine or saliva sample was required

under this clause, a certificate signed by a juvenile justice officer to the effect that such a requirement was made for a specific detainee, or for all detainees of a specified class, is admissible in evidence of the facts so certified.

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

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

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

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

specified extent in the urine or saliva, or

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

(3) In any such proceedings—

(a) evidence that a government analyst received a container holding a sample of urine, being a container that was marked or labelled to indicate that it held a sample of urine obtained from a specified detainee on a specified day, is evidence that the sample was a sample of urine obtained from that detainee on that day, and

(a1) evidence that a government analyst received a container holding a sample of saliva, being a container that was marked or labelled to indicate that it held a sample of saliva obtained from a specified detainee on a specified day, is evidence that the sample was a sample of saliva obtained from that detainee on that day, and

(b) evidence that the container, when received, was sealed with an unbroken seal is evidence that the sample had not been tampered with before it was received by the government analyst.

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

The Secretary may provide results of positive urine tests to the Chief Executive, Justice Health and Forensic Mental Health Network.

## **Part 8 Misbehaviour**

### **Division 1 Misbehaviour generally**

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

(1) A punishment referred to in section 21 of the Act may be imposed for the following misbehaviour—

- (a) an offence under section 37A of the Act,
- (b) a breach of Schedule 1.

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

#### **74 Misbehaviour**

A detainee must not—

- (a) breach any of the provisions of Schedule 1, or



- (b) encourage any other detainee to breach any of those provisions.

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

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

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

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

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

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

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

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

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

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

#### **79 Inquiry to be held**

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

## **80 Adjournments**

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

## **81 Procedure after guilty plea**

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

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

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

## **83 Procedure generally**

- (1) An inquiry must be conducted with as little formality and technicality, and with as much expedition, as fairness to the detainee, the requirements of the Act and this Regulation and the proper consideration of the allegation permit.
- (2) Neither the person who made the allegation nor the detainee are entitled to be represented by a legal practitioner or by any other person.
- (3) If the detainee refuses or fails to attend the inquiry, the centre manager may deal with the allegation in the detainee's absence.
- (4) Evidence must not be required to be given on oath at the inquiry.
- (5) The centre manager may allow such persons to participate in the inquiry as the centre manager thinks fit.
- (6) A detainee may be dealt with for misbehaviour even though the misbehaviour constitutes an offence.
- (7) Punishment must not be imposed on a person found guilty of misbehaviour if criminal proceedings have been brought in respect of substantially the same facts as those on which the person has been found guilty.

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

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

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

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

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

(1) When the centre manager imposes a punishment under section 21 of the Act, the centre manager must keep a record of the following particulars—

- (a) particulars of the detainee's name and age,
- (b) particulars of the dates and times when the misbehaviour occurred,
- (c) particulars of the dates and times of the inquiry into the allegation of misbehaviour,
- (d) particulars of the name and official capacity of the person who made the allegation,
- (e) particulars of the detainee's plea,
- (f) particulars of the evidence given at the inquiry,
- (g) particulars of the reasons for which the detainee was found guilty of misbehaviour,
- (h) particulars of the punishment imposed on the detainee and of the reasons for which that particular punishment was imposed.

(2) The centre manager must forward to the Secretary, within 10 days after the end of each calendar month, a copy of all records made by the centre manager under this clause for that month.

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

#### **87 Application of Division**

- (1) This Division applies to misbehaviour that is dealt with by the Children's Court.
- (2) Proceedings for misbehaviour are not to be commenced before the Children's Court except with the approval of the Secretary.

- (3) Subclause (2) does not apply to proceedings for an offence under section 37A of the Act that is dealt with and an offence rather than as misbehaviour.

### **88 Allegations of misbehaviour**

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

### **89 Notice of hearing**

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

## **Part 9 Parole**

### **90 Definitions**

- (1) In this Part—
- parole order*** means a parole order made by the Children's Court under Part 4C of the Act or a statutory parole order within the meaning of that Part.
- (2) Words and expressions used in this Part have the same meaning as in Part 4C of the Act.

## **91 Preparation of reports by juvenile justice officer**

- (1) For the purposes of section 46 (5) of the Act, a report prepared by a juvenile justice officer (a **parole report**) must address the following matters—
  - (a) whether or not the officer recommends that a parole order be made for the juvenile offender,
  - (b) the juvenile offender's overall behavioural response while in detention,
  - (c) the juvenile offender's willingness to participate, and participation, in rehabilitation, work, education or other programs in custody and the availability of those programs,
  - (d) how the juvenile offender would be managed in the community, including the measures to be taken to assist the offender while on parole,
  - (e) any significant community support available to the juvenile offender on discharge,
  - (f) any additional matters that the Children's Court considers necessary for its consideration of parole.
- (2) The parole report must also contain the following material relating to the juvenile offender, if it is available—
  - (a) a psychological or psychiatric assessment,
  - (b) a copy of any current court orders,
  - (c) a copy of the sentencing court's comments at the time of sentencing.
- (3) A parole report for a juvenile offender is not required to include a matter referred to in subclause (1) (b)–(f) or material referred to in subclause (2) if a previous parole report has been prepared for the offender and the juvenile justice officer is of the opinion that the particulars of that matter or material have not changed since the previous report was prepared.
- (4) Despite subclause (3), the Children's Court may require a parole report for a juvenile offender to include any or all of the matters or material referred to in that subclause.

## **92 Parole orders**

- (1) A parole order must be in writing in a form approved by the Minister.
- (2) A copy of the order is to be given to the juvenile offender, and further copies are to be sent to the following persons—
  - (a) the centre manager of the detention centre in which the juvenile offender is kept,
  - (b) the Secretary.

- (3) Copies of the order sent to the centre manager of the detention centre are, if practicable, to be sent so as to arrive at the detention centre at or before the time the juvenile offender arrives.

### **93 Parole order to be explained to juvenile offender**

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

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

For the purposes of section 53 (1) of the Act, the following are standard conditions of parole—

- (a) the juvenile offender must, while on release on parole, be of good behaviour,
- (b) the juvenile offender must not, while on release on parole, commit any offence,
- (c) the juvenile offender must, while on release on parole, adapt to normal lawful community life.

### **95 Supervision conditions**

- (1) For the purposes of section 55 (1) of the Act, a juvenile offender who is subject to supervision under a condition of parole imposed by that section (a **supervision condition**) has the following obligations—

- (a) to comply with all reasonable directions of a juvenile justice officer relating to any of the following—
    - (i) reporting to the officer or the officer’s nominee,
    - (ii) the place in which the juvenile offender is to reside,
    - (iii) participating in programs, treatment, interventions or other related activities,
    - (iv) without limiting subparagraph (iii), participating in employment, education, training or other related activities,
    - (v) not undertaking specified employment, education, training, volunteer, leisure or other activities,
    - (vi) not associating with a specified person,
    - (vii) not frequenting or visiting a specified place or area,
    - (viii) requirements for the purpose of monitoring compliance with the parole order,
  - (b) to comply with any other reasonable directions of a juvenile justice officer,
  - (c) to permit a juvenile justice officer to visit the offender at the offender’s place of residence at any reasonable time and, for that purpose, to enter the premises,
  - (d) to notify a juvenile justice officer of any change to his or her place of residence, contact details or employment—
    - (i) if practicable, before the change occurs, or
    - (ii) if that is not practicable, within 7 days of the change occurring,
  - (e) not to leave New South Wales without the permission of a juvenile justice officer,
  - (f) not to leave Australia without the permission of the Children’s Court.
- (2) For the purposes of section 55 (2) of the Act, the period of supervision under a supervision condition imposed on a parole order is—
- (a) the lesser of 3 years or the period that the parole order is in force, in the case of a classified person, or
  - (b) the lesser of 2 years or the period that the parole order is in force, in any other case.
- (3) The period of supervision commences when the juvenile offender is released on parole.

- (4) Supervision of a juvenile offender who is subject to a supervision condition is to be carried out by a juvenile justice officer assigned by a more senior juvenile justice officer to supervise the offender.
- (5) A juvenile justice officer may from time to time assign another juvenile justice officer to supervise the juvenile offender and, in that event, must cause notice of that fact to be sent to the offender.

#### **96 Suspension of supervision conditions**

- (1) A juvenile justice officer must take the following matters into account before deciding under section 57 of the Act to make an order (a **suspension order**) suspending the application of a supervision condition to a juvenile offender—
  - (a) the risk of the offender re-offending,
  - (b) the seriousness of the offender's criminal history,
  - (c) the likely benefits of the supervision condition continuing to apply and the effect of any other measures that are being, or may be, taken to address the risk of the offender re-offending,
  - (d) the resources available to supervise the offender and other offenders who may be at a higher risk of re-offending.
- (2) A juvenile justice officer must not make a suspension order unless the suspension is approved by a more senior juvenile justice officer.
- (3) The Secretary is required to give notice to a juvenile offender of the making or revocation of a suspension order.
- (4) A juvenile offender who is subject to a suspension order must notify a juvenile justice officer of any change to the offender's place of residence or contact details.
- (5) The suspension of a supervision condition takes effect when notice of the order has been given to the offender.
- (6) The revocation of a suspension order takes effect when notice of the revocation is given to the juvenile offender under this clause.

#### **97 Changes to conditions of parole order**

If a notice has been given to a juvenile offender under section 53 (2) of the Act, the Registrar of the Children's Court must send written advice to the Secretary that the notice has been given and must include with the advice a copy of the notice.

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

- (1), (2) (Repealed)



- (3) The Children's Court must send copies of an order under section 63 of the Act to the centre manager of the detention centre in which the juvenile offender is kept.
- (4) As soon as practicable after receiving the order, the centre manager must ensure that—
  - (a) the order is read to the juvenile offender, and
  - (b) the effect of the order is explained to the juvenile offender in language that is capable of being readily understood by the juvenile offender, and
  - (c) the juvenile offender's rights to a reconsideration of the revocation are explained to the juvenile offender in language that is capable of being readily understood by the juvenile offender, and
  - (d) a copy of the order is handed to the juvenile offender.
- (5) The Children's Court must send notice of the revocation of a parole order under section 63 of the Act to the Secretary.

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

- (1) A notice under section 89 of the Act of a decision not to make a parole order for a juvenile offender must be sent to the centre manager of the detention centre in which the juvenile offender is kept.
- (2) As soon as practicable after receiving the notice, the centre manager must ensure that—
  - (a) the notice is read to the juvenile offender, and
  - (b) the effect of the notice is explained to the juvenile offender in language that is capable of being readily understood by the juvenile offender, and
  - (c) the notice is handed to the juvenile offender.
- (3) Notice of a juvenile offender's intention to make representations to the Children's Court concerning release on parole—
  - (a) must be given by the juvenile offender to the centre manager of the detention centre in which the juvenile offender is kept, and
  - (b) must be sent by the centre manager to the Registrar of the Children's Court.
- (4) (Repealed)

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

- (1) A notice under section 89 of the Act of a decision by the Children's Court not to make a parole order following the reconsideration of a decision to refuse parole must be

sent to the centre manager of the detention centre in which the juvenile offender is kept.

- (2) As soon as practicable after receiving the notice, the centre manager must ensure that—
  - (a) the notice is read to the juvenile offender, and
  - (b) the effect of the notice is explained to the juvenile offender in language that is capable of being readily understood by the juvenile offender, and
  - (c) the juvenile offender's rights concerning the Children's Court's decision are explained to the juvenile offender in language that is capable of being readily understood by the juvenile offender, and
  - (d) the notice is handed to the juvenile offender.
- (3) The centre manager must keep a copy of the notice.
- (4) The Registrar of the Children's Court must send a copy of the notice to the Secretary.

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

- (1) A notice under section 89 of the Act of a decision by the Children's Court to revoke a parole order or to uphold the revocation of a parole order on a reconsideration is to be in the form approved by the President of the Court.
- (2) The notice must be sent to the centre manager of the detention centre in which the juvenile offender is kept.
- (3) As soon as practicable after receiving the notice, the centre manager must ensure that—
  - (a) the notice is read to the juvenile offender, and
  - (b) the effect of the notice is explained to the juvenile offender in language that is capable of being readily understood by the juvenile offender, and
  - (c) the notice is handed to the juvenile offender.
- (4) Notice of a juvenile offender's intention to make representations to the Children's Court concerning the revocation of a parole order—
  - (a) must be given by the juvenile offender to the centre manager of the detention centre in which the juvenile offender is kept, and
  - (b) must be sent by the centre manager to the Registrar of the Children's Court.
- (5) (Repealed)

## **102 Decision on reconsideration of revocation**

- (1) The Registrar of the Children's Court must send written notice of a decision of the Children's Court following a reconsideration under Division 7 of Part 4C of the Act of the revocation of a parole order to the centre manager of the detention centre in which the juvenile offender is kept.
- (2) As soon as practicable after receiving the notice, the centre manager must ensure that—
  - (a) the notice is read to the juvenile offender, and
  - (b) the effect of the notice is explained to the juvenile offender in language that is capable of being readily understood by the juvenile offender, and
  - (c) the juvenile offender's rights concerning the decision are explained to the juvenile offender in language that is capable of being readily understood by the juvenile offender.
- (3) The Registrar of the Children's Court must send a copy of the notice to the Secretary.

## **103, 104 (Repealed)**

## **105 Arrest warrants**

A warrant for the arrest of a person under section 82 of the Act must be in the form set out in Form 2.

## **106 Warrants of commitment**

A warrant for the commitment of a juvenile offender to a detention centre under section 82 of the Act must be in the form set out in Form 3.

## **107 Delegation of functions**

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

## **107A Serious offenders about whom State may make submissions**

For the purposes of section 86 of the Act, the class of juvenile offenders who are serving a sentence of imprisonment, or are subject to a detention order, after being convicted of an offence involving violence (within the meaning of section 49 of the Act) are serious offenders.

## **107B Children's Court to supply documents for submissions**

- (1) This clause applies if any of the following notifies the Children's Court of a possible intention to make a submission under the Act concerning the release on parole of a juvenile offender—

- (a) the State,
- (b) the Minister or the Attorney General,
- (c) the Secretary.

(2) The Court must give the State, the Minister, the Attorney General or the Secretary copies of the reports and other documents intended to be used by the Court in deciding whether the juvenile offender should be released on parole.

### **107C Records of proceedings**

The Children's Court must keep a record (in writing or otherwise) of the proceedings of the Court relating to parole, including a record of—

- (a) whether the Minister or the Attorney General has appeared or been represented before the Court, and
- (b) the persons appearing or represented before the Court, and
- (c) the submissions, if any, made by the Minister or the Attorney General or a person referred to in paragraph (b), and
- (d) the reasons, if any, stated in support of the submissions.

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

### **Division 1 Preliminary**

#### **108 Interpretation**

(1) In this Part—

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

**disciplinary procedure** means any procedure of a disciplinary nature or other related proceedings relating to a contravention of a provision of this Part and includes, but is not limited to, proceedings or action under section 68 or 69 of the [Government Sector Employment Act 2013](#).

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

- (a) a sample of breath, taken by breath test, breath analysis or otherwise,

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

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

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

- (2) In this Part, a juvenile justice officer **presents for duty** when the officer is present at the officer's place of work and about to go on duty.
- (3) In this Part, a juvenile justice officer **tests positive for alcohol** if a test conducted under Division 2 of Part 4A of the Act indicates that the officer had the prescribed concentration of alcohol in his or her breath or blood—
  - (a) when the officer presented for duty, or
  - (b) while the officer was on duty.
- (4) In this Part, a juvenile justice officer **tests positive for prohibited drugs** if a test conducted under Division 2 of Part 4A of the Act indicates that the officer had a prohibited drug present in any of his or her biological material—
  - (a) when the officer presented for duty, or
  - (b) while the officer was on duty.
- (5) In this Part, a reference to a non-invasive sample does not include a reference to a sample of breath taken by breath test or breath analysis.

### **109 Appointment of authorised persons**

- (1) The Secretary may, by instrument in writing, appoint any person to be an authorised person for the purposes of Division 2 of Part 4A of the Act.

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

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

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

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

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

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

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

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

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

### **112 Testing of juvenile justice officers**

- (1) A juvenile justice officer may be tested under Division 2 of Part 4A of the Act whether or not there is any suspicion that the officer has recently consumed alcohol or used a

prohibited drug.

- (2) The result of any such test may be used for the purposes of any disciplinary procedure.

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

- (1) An authorised person who requires a juvenile justice officer to provide, or to enable the taking of, a non-invasive sample from the officer under Division 2 of Part 4A of the Act must specify the type of non-invasive sample to be provided or taken.
- (2) The non-invasive sample so provided or taken must be of the type of non-invasive sample required by the authorised person.
- (3) The juvenile justice officer may not elect which type of non-invasive sample is provided.
- (4) A non-invasive sample provided by or taken from a juvenile justice officer under Division 2 of Part 4A of the Act—
  - (a) must be provided or taken in circumstances affording reasonable privacy to the officer, except as permitted (expressly or impliedly) by any other provision of the Act or this Regulation, and
  - (b) must not be provided or taken in the presence or view of a person whose presence is not necessary for the purposes of the provision or taking of the non-invasive sample or required or permitted by another provision of the Act or this Regulation, and
  - (c) must not involve the removal of more clothing than is necessary for providing or taking the non-invasive sample, and
  - (d) must not involve more visual inspection than is necessary for providing or taking the non-invasive sample.
- (5) All non-invasive samples provided by or taken from a juvenile justice officer under Division 2 of Part 4A of the Act are to be provided or taken in a manner consistent with appropriate medical or other relevant professional standards, with due regard to the dignity and self-respect of the officer and in as seemly a manner as is consistent with the effective provision or taking of the non-invasive sample.

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

- (1) As soon as practicable after a juvenile justice officer has undergone a breath test under Division 2 of Part 4A of the Act, the authorised person who conducted the breath test must, if the concentration of alcohol determined by the breath test to be present in the officer's breath or blood exceeds the prescribed concentration, deliver to the officer a statement in writing signed by the authorised person specifying—

- (a) the concentration of alcohol determined by the breath test to be present in the officer's breath or blood and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood, and
  - (b) the day on which and time of the day at which the breath test was completed.
- (2) An authorised person may require a juvenile justice officer to submit to a breath analysis in accordance with the directions of the authorised person if—
  - (a) it appears to the authorised person as a result of a breath test under Division 2 of Part 4A of the Act that the prescribed concentration of alcohol may be present in the officer's breath or blood, or
  - (b) the officer refuses or fails to undergo a breath test under Division 2 of Part 4A of the Act in accordance with the directions of the authorised person when requested to do so by the authorised person.
- (3) As soon as practicable after a juvenile justice officer has submitted to a breath analysis the authorised person operating the breath analysing instrument must deliver to the officer a statement in writing signed by the authorised person specifying—
  - (a) the concentration of alcohol determined by the analysis to be present in the officer's breath or blood and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood, and
  - (b) the day on which and time of the day at which the breath analysis was completed.
- (4) A juvenile justice officer who is required to undergo a breath test or submit to a breath analysis may request the authorised person making the requisition to arrange for the taking (in the presence of an authorised person) of a sample of the officer's blood for analysis, at the officer's own expense, by—
  - (a) a medical practitioner nominated by the officer, or
  - (b) a medical practitioner nominated by the authorised person at the officer's request, or
  - (c) a pathology specimen collector at a collection centre nominated by the officer, or
  - (d) a pathology specimen collector at a collection centre nominated by the authorised person at the officer's request.
- (5) The making of any such request or the taking of a sample of a juvenile justice officer's blood does not absolve the officer from the obligation imposed on the officer to undergo a breath test or submit to a breath analysis in accordance with this clause.
- (6) In this clause, **collection centre** means a pathology collection centre that is operated by, or in connection with, a pathology laboratory that is accredited by the



National Association of Testing Authorities.

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

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

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

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

- (1) A medical practitioner or registered nurse by whom a sample of a juvenile justice officer's blood is taken under Division 2 of Part 4A of the Act must—
  - (a) divide the sample into 3 approximately equal portions, and

- (b) place each portion of the sample into a separate container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (2) Of the sealed containers—
- (a) two containers must, as soon as reasonably practicable, be transported to an approved laboratory for analysis by a government analyst in accordance with subclause (4), and must be stored at that laboratory on behalf of the Secretary, and
  - (b) the other container—
    - (i) if the officer has requested a part of the sample, must be given to the officer, or
    - (ii) if the officer does not request or is not capable of requesting a part of the sample, must, as soon as reasonably practicable, be transported to the approved laboratory to which the other two containers were sent and must be stored at that laboratory on behalf of the Secretary.
- (3) If a juvenile justice officer does not request or is not capable of requesting a part of the sample, the officer may, within 12 months after the taking of the sample, apply to the approved laboratory for the container referred to in subclause (2) (b) (ii) to be sent for analysis (at the officer's own expense) to a medical practitioner or laboratory nominated by the officer.
- (4) The authorised person may arrange for the analyst to—
- (a) determine whether the sample contains alcohol, and if so, the concentration of alcohol, or
  - (b) determine whether the sample contains a prohibited drug, or
  - (c) determine whether the sample contains alcohol, and if so, the concentration of alcohol and determine whether the sample also contains a prohibited drug.

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

- (1) A person who is provided with a non-invasive sample under Division 2 of Part 4A of the Act from a juvenile justice officer or who takes a non-invasive sample from a juvenile justice officer must—
- (a) divide the sample into 3 approximately equal portions or, if the sample cannot be so divided, immediately require and immediately be provided with or take 2 further samples of the same type of biological material, and

- (b) place each portion (or if 3 samples of the same type of biological material were provided or taken, each sample) into a separate container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (2) Of the sealed containers—
- (a) two containers must, as soon as reasonably practicable, be transported to an approved laboratory for analysis by a government analyst in accordance with subclause (4), and must be stored at that laboratory on behalf of the Secretary, and
  - (b) the other container—
    - (i) if the officer has requested a part of the sample, must be given to the officer, or
    - (ii) if the officer does not request or is not capable of requesting a part of the sample, must, as soon as reasonably practicable, be transported to the approved laboratory to which the other two containers were sent and must be stored at that laboratory on behalf of the Secretary.
- (3) If a juvenile justice officer does not request or is not capable of requesting a part of the sample, the officer may, within 12 months after the taking of the sample, apply to the approved laboratory for the container referred to in subclause (2) (b) (ii) to be sent, for analysis (at the officer's own expense) to a medical practitioner or laboratory nominated by the officer.
- (4) The authorised person may arrange for the analyst—
- (a) if the non-invasive sample was provided or taken under section 37K of the Act, to determine whether the sample indicates that the blood of the juvenile justice officer, by whom the sample was provided or from whom the sample was taken, contained alcohol, and if so, the concentration of alcohol in the blood of the officer or determine whether the sample contains a prohibited drug, or
  - (b) if the non-invasive sample was provided or taken under section 37J of the Act, to determine whether the sample contains a prohibited drug.
- (5) In the case of samples of urine, any sealed containers referred to in subclause (2) must be handled in accordance with the procedure set out in AS/NZ 4308:2008 or any other procedure approved by the Secretary for the purposes of this clause.

### **118 Analysis of samples**

- (1) A government analyst to whom a portion of a sample of blood or a non-invasive

sample is submitted for analysis under clause 116 or 117 may carry out an analysis in accordance with the arrangement made by the authorised person under clause 116 (4) or 117 (4), as the case requires.

- (2) The analysis must be carried out, and a report provided, in accordance with—
- (a) AS/NZ 4308:2008, except as provided by paragraph (b), or
  - (b) such other procedure as may be directed by the Secretary.

## Division 4 Evidence

### 119 Definitions

In this Division—

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

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

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

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

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

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

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

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

- (3) For the purposes of any disciplinary procedure involving an alcohol contravention, evidence of the condition of a device by means of which a breath test was carried out or of a breath analysing instrument or the manner in which the device or instrument was operated is not to be required unless evidence that the device or instrument was not in proper condition or was not properly operated has been adduced.
- (4) For the purposes of any disciplinary procedure involving an alcohol contravention, evidence may be given of the concentration of alcohol present in the breath or blood of the juvenile justice officer, as determined by a device by which a breath test was carried out or by a breath analysing instrument operated by an authorised person.
- (5) The concentration of alcohol so determined is taken to be the concentration of alcohol in the breath or blood of the juvenile justice officer at the time the officer presented for duty if the breath analysis was made within 3 hours after that time, unless the officer proves that the concentration of alcohol in the officer's breath or blood at that time was less than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of blood.
- (6) The concentration of alcohol so determined is taken to be the concentration of alcohol in the breath or blood of the juvenile justice officer while the officer was on duty if the breath analysis was made—
  - (a) while the officer was on duty, or
  - (b) within 3 hours after the officer ceased to be on duty,

unless the officer proves that the concentration of alcohol in the officer's breath or blood at that time was less than 0.02 grammes of alcohol in 210 litres of breath or 100

millilitres of blood.

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

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

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

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

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

- (3) For the purposes of any disciplinary procedure involving an alcohol contravention, a certificate purporting to be signed by a government analyst and certifying any one or

more of the following matters—

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

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

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

- (a) of the particulars certified in and by the certificate, and
- (b) that the sample was a portion of the sample of the blood of that specified person or a non-invasive sample provided by or taken from the specified person, and
- (c) that the portion had not been tampered with before it was received by the analyst.

- (5) For the purposes of any disciplinary procedure involving an alcohol contravention, evidence may be given of the concentration of alcohol present in the blood or other biological material of the officer, as determined by an analysis under Division 2 of Part 4A of the Act of a portion of a sample of the officer's blood or a non-invasive sample provided by or taken from the officer, as the case may be.
- (6) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the juvenile justice officer at the time the officer presented for duty if that sample of blood or non-invasive sample was taken within 3 hours after that time, unless the officer proves that the concentration of alcohol in the officer's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.
- (7) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the juvenile justice officer while the officer was on duty if that sample

of blood or non-invasive sample was taken—

- (a) while the officer was on duty, or
- (b) within 3 hours after the officer ceased to be on duty,

unless the officer proves that the concentration of alcohol in the officer's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

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

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

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

- (2) For the purposes of any disciplinary procedure involving a prohibited drug contravention, a certificate purporting to be signed by a person and certifying any one or more of the following matters—
  - (a) that the person was provided with or took a non-invasive sample from a specified person in accordance with Division 2 of Part 4A of the Act and this Part on the day and at the time stated in the certificate,
  - (b) that the person dealt with the sample in accordance with clause 117,

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

- (3) For the purposes of any disciplinary procedure involving a prohibited drug contravention, a certificate purporting to be signed by a government analyst and certifying any one or more of the following matters—
  - (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from a specified person in a container submitted for analysis under Division 2 of Part 4A of the Act and this Part,



- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
  - (c) that, on receipt by the analyst of the container, the seal was unbroken,
  - (d) that the analyst carried out an analysis of the portion to determine whether any prohibited drug was present in the sample,
  - (e) that a specified prohibited drug ascertained pursuant to the analysis was present in that portion,
  - (f) that the analyst was, at the time of the analysis, a government analyst,
- is prima facie evidence of the matters set out in subclause (4).
- (4) A certificate under subclause (3) is prima facie evidence—
- (a) of the particulars certified in and by the certificate, and
  - (b) that the portion was a portion of the sample of that specified person's blood or a non-invasive sample provided by, or taken from, that specified person, and
  - (c) that the portion had not been tampered with before it was received by the analyst.
- (5) For the purposes of any disciplinary procedure involving a prohibited drug contravention, evidence may be given of the presence of a prohibited drug in the blood or other biological material of the juvenile justice officer, as determined pursuant to an analysis under Division 2 of Part 4A of the Act of a portion of a sample of the person's blood or a non-invasive sample provided by or taken from the officer.
- (6) The prohibited drug the presence of which is so determined, is taken to have been present in the blood or other biological material of the juvenile justice officer when the officer presented for duty, if the sample was taken or provided within 24 hours of the time the officer last presented for duty, unless the officer proves the absence, at that time, of the drug.
- (7) The prohibited drug the presence of which is so determined, is taken to have been present in the blood or other biological material of the juvenile justice officer while the officer was on duty if the sample was taken or provided within 24 hours of the later of—
- (a) the time the officer last was involved in an incident referred to in section 37J (3) of the Act (if such an incident occurred), or
  - (b) the officer last ceased to be on duty,
- unless the officer proves the absence, at that time, of the drug.

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

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

## **Division 5 Consequences**

### **124 Disciplinary action**

Nothing in this Part limits any disciplinary action that may be taken under the *Government Sector Employment Act 2013* in respect of a juvenile justice officer.

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

- (1) A juvenile justice officer must not refuse—
  - (a) to undergo a breath test, or
  - (b) to submit to a breath analysis, or
  - (c) to provide, or enable the taking of, a non-invasive sample from the juvenile justice officer, or
  - (d) to comply with any other requirement of or under Division 2 of Part 4A of the Act, in accordance with a direction given under Division 2 of Part 4A of the Act by an authorised person.
- (2) This clause does not prevent a juvenile justice officer so refusing if the juvenile justice officer is unable on medical grounds to do otherwise.

### **126 Double jeopardy**

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

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

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

- (1) If a juvenile justice officer tests positive for alcohol or a juvenile justice officer tests positive for a prohibited drug, the officer, if the officer remains on duty, is to be immediately relieved of duty and is not to carry out any duty for the duration of the officer's shift.

- (2) In particular, a juvenile justice officer who is relieved from duty because of the operation of this clause is not entitled to paid sick leave for that part of the relevant shift that the officer did not work.

## **Division 6 Offences**

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

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

Maximum penalty—20 penalty units.

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

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

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

Maximum penalty—20 penalty units.

## **Part 11 Justice Health matters**

### **130 Examination of detainees**

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

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

As soon as practicable after forming an opinion—

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

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

### **132 Mental illness**

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

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

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

### **134 Medical records**

- (1) Proper medical records are to be kept in respect of each detainee, with entries as to each examination that is carried out on a detainee by a Justice Health officer.
- (2) The medical records for detainees at a detention centre are to be kept at the centre in the custody of a Justice Health officer, and their contents are not to be divulged to any

person outside Justice Health and Forensic Mental Health Network (including the detainee) except in accordance with guidelines established by the Chief Executive, Justice Health and Forensic Mental Health Network.

- (3) Subclause (2) does not prevent information in a detainee's medical records from being used to prepare general reports on the detainee's health for submission to the centre manager of a detention centre, and such a report must be prepared and submitted whenever the centre manager so requests.
- (4) As soon as practicable after a detainee is transferred from one detention centre to another, the detainee's medical records are to be given into the custody of a Justice Health officer at the centre to which the detainee is transferred.
- (5) Subclause (4) does not apply if the detainee is temporarily transferred to a police station or court cell complex.

### **135 Infectious diseases**

- (1) As soon as practicable after forming an opinion that a detainee has, or appears to have, a serious infectious disease, a Justice Health officer must report that he or she has formed the opinion, and the grounds for the opinion, to the centre manager.
- (2) In the case of a report from the Chief Executive, Justice Health and Forensic Mental Health Network, the centre manager must carry into effect any recommendation contained in such a report in so far as it is practicable to do so.
- (3) If it is impracticable to carry a recommendation into effect, the centre manager must report that fact to the Chief Executive, Justice Health and Forensic Mental Health Network.
- (4) In this clause, ***serious infectious disease*** means an infectious disease that is also a notifiable disease by virtue of its inclusion in Schedule 2 to the [Public Health Act 2010](#).

### **136 Death of detainees**

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

## **Part 12 Spiritual welfare**

### **137 Definition**

In this Part, ***accredited chaplain*** means a minister of religion for the time being accredited as a chaplain under clause 139.

### **138 Religious denomination of detainees**

- (1) A detainee, on admission into a detention centre—

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

### **139 Accreditation of chaplains**

- (1) A minister of religion may not perform the functions of a chaplain in a detention centre unless the minister—
- (a) is accredited by the Secretary under this clause, and
  - (b) is permitted by the appropriate authority for the religious organisation of which the minister is a member to work as a chaplain in the detention centre.
- (2) The Secretary may, by instrument in writing, accredit a minister of religion who has been endorsed as suitable and competent by the Civil Chaplaincies Advisory Committee to work as a full-time, part-time or sessional chaplain to detainees at a detention centre.
- (3) The Secretary must not accredit a minister of religion unless the minister has undergone a criminal record check and been found by the Secretary to be suitable to work as a chaplain in the centre.
- (4) The Secretary may, at any time, by instrument in writing, revoke any such accreditation.
- (5) The Secretary must give written notice of any revocation to the Civil Chaplaincies Advisory Committee.
- (6) In this clause, **Civil Chaplaincies Advisory Committee** means the committee, made up of representatives from various religious organisations, that liaises between those religious organisations and government departments in matters of chaplaincy in

correctional centres, detention centres and other public institutions.

#### **140 Privileges of accredited chaplains**

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

#### **141 Responsibilities of accredited chaplains**

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

#### **142 Powers of accredited chaplains**

- (1) An accredited chaplain is entitled—
  - (a) to visit the detention centre to which he or she is accredited at all reasonable times, but not so as to disturb the ordinary routine of the centre, and
  - (b) to have access to detainees for the purpose of religious ministrations.
- (2) On Sundays or other recognised days of religious observance, and on such other days as the centre manager may permit, an accredited chaplain—
  - (a) may hold or conduct such rites, services or assemblies as pertain to the accredited chaplain's denomination, or
  - (b) with the permission of the centre manager, may hold or conduct combined services in association with ministers of religion of other denominations.
- (3) An accredited chaplain may minister to any detainee at the detention centre, unless the detainee objects.

- (4) An accredited chaplain is entitled to have access to a detainee under this clause beyond the hearing (but within the sight) of a juvenile justice officer.
- (5) An accredited chaplain is authorised, despite any other law, to disclose information relating to the welfare of a detainee to the centre manager if the chaplain considers it in the interests of the detainee or other detainees at the detention centre to do so.
- (6) With the approval of the centre manager, an accredited chaplain may pursue such matters as the accredited chaplain considers to be in the interests of the welfare of detainees at the detention centre to which he or she is accredited, and of their families.

#### **143 Non-accredited ministers of religion**

- (1) With the approval of the centre manager, a minister of religion of a particular denomination who is not accredited in relation to a particular detention centre—
  - (a) may visit the centre, and
  - (b) may have access to detainees of that denomination,if no other minister of religion of that denomination has been accredited for the centre.
- (2) On request by a detainee belonging to a denomination for which no minister of religion has been accredited, the centre manager (after consultation with accredited chaplains) may arrange for the detainee to be visited by a minister of religion of that denomination.
- (3) A decision by the centre manager to grant a request under subclause (2) does not affect the number of visits and maximum number of visitors to which the detainee may otherwise be entitled.
- (4) A minister of religion is entitled to have access to a detainee under this clause beyond the hearing (but within the sight) of a juvenile justice officer.
- (5) A minister of religion may only visit a detainee under this clause if the detainee does not object.

#### **144 Participation of detainees in religious observances**

- (1) The centre manager must take all reasonable steps to facilitate the participation of detainees in the religious observances of their respective religious denominations, but not so as to offer any inducement, or impose any sanction, with respect to any such participation.
- (2) A detainee may attend the following rites, services and assemblies conducted at the detention centre—



- (a) rites, services or assemblies of the detainee's denomination,
  - (b) combined rites, services or assemblies conducted by ministers of religion of the detainee's denomination in association with ministers of religion of other denominations,
  - (c) rites, services or assemblies of other denominations.
- (3) Religious books, recognised objects of religious devotion and similar items belonging to a detainee are to be treated as approved property of the detainee.

#### **145 Use of chapels**

- (1) A detention centre chapel or a part of a detention centre that is used for the conduct of rites, services or assemblies may be used for such other purposes that are in keeping with the nature of the building, as may be determined by the centre manager after consultation with the relevant accredited chaplains.
- (2) On request by an accredited chaplain, the centre manager of a detention centre must, if reasonably practicable, make available—
- (a) a suitable part of the centre as a detention centre chapel for the conduct of rites, services or assemblies, and
  - (b) suitable facilities for the safekeeping of books and other objects used in connection with the conduct of rites, services or assemblies,
- if no such detention centre chapel or facilities currently exist.
- (3) The centre manager of a detention centre is to encourage detainees to use the detention centre chapel for personal devotion, worship and meditation.
- (4) A detainee must not desecrate or abuse any books or other objects used in connection with the rites, services or assemblies of a religious denomination.
- (5) A juvenile justice officer must not damage any books or other objects used in connection with the rites, services and assemblies of a religious denomination, otherwise than in circumstances where the damage is—
- (a) unavoidable, and
  - (b) in the course of a search or of carrying out the officer's duties.

#### **146 Accredited chaplains may advise committees**

- (1) With the approval of the centre manager, an accredited chaplain—
- (a) may attend meetings of any committee concerned with the management of the detention centre to which he or she is accredited, and

(b) at any such meeting, may offer advice in relation to the welfare of detainees.

(2) An accredited chaplain is not entitled to vote on any motion or proposal put before such a committee or otherwise to participate in its decisions.

#### **147 Accredited chaplaincy services generally**

(1) The accredited chaplains, in collaboration with the Secretary and the appropriate religious authorities, may assist in—

(a) the development of community support for juvenile justice services, and

(b) the development and extension of accredited chaplaincy services in detention centres.

(2) In consultation with the accredited chaplains and appropriate religious authorities, the Secretary must from time to time review the effectiveness of the accredited chaplaincy services in detention centres.

#### **148 Exclusion of ministers of religion on grounds of security**

The Secretary may prohibit—

(a) a particular minister of religion, or

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

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

### **Part 12A Disclosures and exchange of information**

#### **148AA Definitions**

In this Part—

**relevant person** means a person who is or has been 1 or more of the following—

(a) a detainee,

(b) a juvenile inmate transferred to a detention centre under section 10 of the Act,

(c) a juvenile offender released on parole under Part 4C of the Act,

(d) the subject of a children's community service order within the meaning of the *Children (Community Service Orders) Act 1987*,

(e) a child offender the subject of a community clean up order under Part 3A of the *Graffiti Control Act 2008*,

(f) a person in relation to whom a matter is referred to a conference administrator under

the *Young Offenders Act 1997*,

- (g) a person supervised by Youth Justice NSW as a condition of—
  - (i) bail under the *Bail Act 2013*, or
  - (ii) a community correction order or conditional release order under the *Crimes (Sentencing Procedure) Act 1999*, or
  - (iii) an order under section 33 of the *Children (Criminal Proceedings) Act 1987*.

**Youth Justice NSW** means that part of the Department comprising the group of staff principally involved in the administration of the Act.

**148AB Purposes for which Secretary may disclose information**

- (1) For the purposes of section 102A(1) of the Act, each of the following is prescribed as a purpose for which the Secretary may disclose information under that subsection, if the Secretary considers the disclosure to be reasonably necessary for the purpose—
  - (a) facilitating appropriate management and supervision of a relevant person who is in the custody, or under the supervision, of a government agency of the Commonwealth, another State or Territory or New Zealand that substantially corresponds with Corrective Services NSW or Youth Justice NSW,
  - (b) facilitating the exercise of the lawful functions of each of the following in relation to a relevant person—
    - (i) the Commonwealth Department of Home Affairs, or a successor of that Department,
    - (ii) the Commonwealth Attorney General’s Department, or a successor of that Department,
  - (c) facilitating the assessment of a relevant person’s eligibility and suitability for the program, conducted by the Department, known as the Engagement and Support Program, or a successor of that program,
  - (d) facilitating data-matching by a government data-linkage centre to enable research into the provision of interventions and services by a NSW public sector agency (within the meaning of the *Privacy and Personal Information Protection Act 1998*) and the outcomes of those interventions and services.
- (2) For the purposes of section 102A(1) of the Act, the Secretary may disclose to another person or body (the **recipient**) information relating to the safety, welfare or well-being of a particular child or young person, or class of children or young persons, in another State or Territory or New Zealand if the Secretary reasonably believes that the disclosure of the information would assist the recipient—

- (a) to make any decision, assessment or plan or to initiate or conduct an investigation, or to provide a service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons (including, where applicable, to provide prioritised access to a service to a child or young person or class of children or young persons at risk of significant harm), or
- (b) to manage a risk to the child or young person, or class of children or young persons, that might arise in the recipient's capacity as an employer.

**148AC Exchange of information with National Disability Insurance Scheme Launch Transition Agency**

- (1) The National Disability Insurance Scheme Launch Transition Agency under the *National Disability Insurance Scheme Act 2013* of the Commonwealth is prescribed as a **relevant agency** for the purposes of the definition of that term in section 102B(5) of the Act.
- (2) For the purposes of the definition of **prescribed information** in section 102B(5) of the Act, the information referred to in subclause (3) is prescribed if it assists the National Disability Insurance Scheme Launch Transition Agency—
  - (a) to identify a relevant person with disability, or
  - (b) to provide support and services to a relevant person with disability.
- (3) Under an information sharing arrangement between them, the National Disability Insurance Scheme Launch Transition Agency is authorised to request and receive, and the Secretary is authorised to disclose, the following information in relation to a relevant person—
  - (a) name, and any known alias,
  - (b) date of birth,
  - (c) whether the Secretary considers the relevant person to be an Aboriginal person or a Torres Strait Islander,
  - (d) the date and time of the relevant person's entry into and exit from a detention centre,
  - (e) contact details for next of kin or carer,
  - (f) last known address when not in detention,
  - (g) details of the relevant person's case manager and community office in Youth Justice NSW,
  - (h) information about any disability or health risks.

#### **148A Exchange of information with Commissioner of Fines Administration**

- (1) The Commissioner of Fines Administration is prescribed as a **relevant agency** for the purposes of the definition of that term in section 102B of the Act.
- (2) For the purposes of the definition of **prescribed information** in section 102B of the Act, the information referred to in subclause (3) is prescribed in relation to the party concerned if it assists in the exercise of—
  - (a) the functions of the Secretary under the Act or this Regulation, or
  - (b) the functions of the Commissioner of Fines Administration under the *Fines Act 1996* or the regulations under that Act.
- (3) Under an information sharing arrangement between the Secretary and the Commissioner of Fines Administration—
  - (a) the Secretary is authorised to request and receive information from the Commissioner of Fines Administration comprising the name, address and date of birth of a person who is the subject of a detention order and is a fine defaulter (within the meaning of the *Fines Act 1996*), and details of the fine, and
  - (b) the Commissioner of Fines Administration is authorised to disclose that information to the Secretary, and
  - (c) the Commissioner of Fines Administration is authorised to request and receive from the Department the following information about a person who is the subject of a detention order and is a fine defaulter (within the meaning of the *Fines Act 1996*)—
    - (i) name,
    - (ii) address,
    - (iii) date of birth, and
  - (d) the Secretary is authorised to disclose that information to the Commissioner of Fines Administration.

### **Part 13 Miscellaneous**

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

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

- (a) the physical, psychological and emotional well-being of detainees,
- (b) the social, cultural and educational development of detainees,

- (c) the general control and management of the detention centre,
- (d) the morale, conduct and functions of persons employed in the detention centre,
- (e) the condition of the premises (including the grounds, buildings, furniture, equipment and amenities) of the detention centre,
- (f) the security of the detention centre.

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

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

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

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

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

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

#### **152 Attendance at youth justice conferences**

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

#### **153 Juvenile justice officers may be searched**

The centre manager of a detention centre may require a juvenile justice officer who is on the premises of the centre—

- (a) to submit to any of the following—
  - (i) an inspection and search of the officer's personal possessions,
  - (ii) scanning by an electronic scanning device,
  - (iii) being sniffed by a dog, and
- (b) to empty the pockets of the officer's clothing, and
- (c) to make available for inspection and search any room, locker or vehicle under the officer's control at the centre.

**153A Unlawful possession of remotely piloted aircraft**

- (1) For the purposes of section 37CA (2) (a) of the Act, the following purposes are prescribed—
  - (a) law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,
  - (b) administering or enforcing the Act,
  - (c) dealing with a fire or other emergency.
- (2) For the purposes of section 37CA (2) (b) of the Act, authorisation in writing by the Secretary or the centre manager of the relevant detention centre to be in possession of the remotely piloted aircraft is prescribed.
- (3) In this clause and clause 153B—

***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 Criminal Intelligence 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) the Department of Justice.

**153B Unlawful possession and operation of remotely piloted aircraft within prohibited**

### **airspace**

- (1) For the purposes of section 37CB (4) (a) of the Act, the following purposes are prescribed—
  - (a) law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,
  - (b) administering or enforcing the Act,
  - (c) dealing with a fire or other emergency.
- (2) For the purposes of section 37CB (4) (b) of the Act, authorisation in writing by the Secretary or the centre manager of the relevant detention centre to be in possession of the remotely piloted aircraft is prescribed.

### **154 Savings**

Any act, matter or thing that, immediately before the repeal of the *Children (Detention Centres) Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.

### **155 Conditions—transitional provision**

- (1) A parole order for a juvenile offender that was in force immediately before the commencement of Part 4C of the Act continues to be subject to the same conditions (the **existing conditions**) to which it was subject immediately before that commencement.
- (2) For the purposes of subclause (1), the former parole provisions, and regulations in force under those provisions, continue to apply to a parole order referred to in that subclause.
- (3) Nothing in this clause prevents the variation or revocation of an existing condition under Part 4C of the Act.
- (4) In this clause—

**former parole provisions** means the provisions of the *Crimes (Administration of Sentences) Act 1999*, as applied by section 29 of the Act before its repeal by the *Parole Legislation Amendment Act 2017*.

### **156 Construction of references in certain existing parole orders relating to juvenile offenders**

- (1) In an existing parole order for a juvenile offender to whom Part 4C of the Act applies—
  - (a) a reference to a community corrections officer includes a reference to a juvenile justice officer, and



(b) a reference to supervision by a community corrections officer includes a reference to supervision by a juvenile justice officer.

(2) In this clause—

**existing parole order** means a parole order for a juvenile offender to whom Part 4C of the Act applies that was—

(a) made under the provisions of the *Crimes (Administration of Sentences) Act 1999*, as applied by section 29 of the Act before its repeal by the *Parole Legislation Amendment Act 2017*, and

(b) in force immediately before the commencement of Part 4C of the Act.

## **157 (Repealed)**

# **Schedule 1 Misbehaviour**

(Clauses 73 and 74)

## **Part 1 Misbehaviour generally**

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

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

### **2 Unauthorised telephone calls**

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

### **3 Lying**

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

### **4 Disobedience**

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

### **5 Stealing**

A detainee must not steal any property.

### **6 Bad language**

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

## **7 Possession of unauthorised articles**

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

## **8 Possession of offensive music**

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

(2) This clause applies to all video or audio recording equipment, including equipment whose possession by the detainee is permitted by the centre manager.

## **9 Tattooing and body piercing**

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

## **10 Smoking**

A detainee must not smoke.

## **11 Unauthorised use of equipment**

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

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

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

## **13 Subversive behaviour**

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

## **14 Harassment**

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

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

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

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

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

### **17 Fighting**

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

### **18 Conditions of leave**

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

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

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

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

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

### **21 Damage to property**

A detainee must not wilfully damage any property.

## **Part 2 Serious misbehaviour**

### **22 Mistreatment of animals**

A detainee must not mistreat any animal.

### **23 Insubordination**

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

### **24 Inciting misbehaviour**

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

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

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

### **26 Unauthorised medications**

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

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

A detainee must not have in his or her possession—

- (a) any mobile phone or part of a mobile phone, mobile phone SIM card, camera or video or audio recording equipment, or
- (b) any charger for any such equipment,

unless it is approved property in relation to the detainee.

## **28 Attempted escapes**

A detainee must not make any attempt to escape.

## **29 Indecency**

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

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

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

## **31 Threatening or intimidating behaviour**

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

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

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

## **33 Lighting fires**

A detainee must not light any fire.

## **34 Assault**

A detainee must not assault any other person.

## Schedule 2 Forms

(Clause 3 (2))

### Form 1

(Repealed)

### Form 2 Arrest warrant

(Clause 105)

(*Children (Detention Centres) Act 1987*, section 82)

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

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

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

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

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

\* and return him/her to a detention centre

\* to serve the portion of his/her term of detention unexpired on .....

\* and to remove him/her to .....

\* for the purpose of conducting, within 7 days, an inquiry as to whether the order should be revoked.

\* The Children's Court ordered the revocation of the Parole Order for breach of the following conditions of the order, namely: .....

.....

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

Dated: .....

.....Children's Magistrate

\* *Delete if inapplicable*

TO ALL POLICE OFFICERS in the State of New South Wales

By virtue of section 82 of the *Children (Detention Centres) Act 1987*, this warrant is sufficient authority for you to arrest, or to have custody of, the juvenile offender named in this warrant, to convey the juvenile offender to the detention centre specified in this warrant and to deliver the juvenile offender into the custody of the centre manager of that detention centre.

### Form 3 Warrant of commitment to detention centre

(Clause 106)

(*Children (Detention Centres) Act 1987*, section 82)

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

WHEREAS ..... of ..... (**the juvenile offender**) has been found guilty by the ..... Court of the following offence or offences—

.....,

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

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

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

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

.....Children's Magistrate

Date: .....

TO ALL POLICE OFFICERS in the State of New South Wales

By virtue of section 82 of the *Children (Detention Centres) Act 1987*, this warrant is sufficient authority for you to arrest, or to have custody of, the juvenile offender named in this warrant, to convey the juvenile offender to the detention centre specified in this warrant and to deliver the juvenile offender into the custody of the centre manager of that detention centre.