

FIRST PRINT

CHILDREN (DETENTION CENTRES) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Community Welfare Bill 1987.

The object of this Bill is to re-enact, with modifications, the provisions of Part X of the Community Welfare Act 1982, being the provisions of that Act that relate to the treatment of children and other persons on remand and subject to control.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 defines certain expressions for the purposes of the proposed Act, in particular, the expressions "classified person", "detainee", "detention order", "person on remand" and "person subject to control".

Clause 4 sets out the objects of the proposed Act. It also provides that, in the administration of the proposed Act, the welfare and interests of persons on remand and persons subject to control shall be given paramount consideration.

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PART 2—DETENTION CENTRES

Clause 5 provides that the Minister may, by order published in the Gazette, declare any premises to be a detention centre for the purposes of the proposed Act, and further provides that the regulations under the proposed Act may provide for different classes of detention centre.

Clause 6 provides that the Director-General of the Department of Youth and Community Services ("the Director-General") shall have the control and management of all detention centres.

Clause 7 provides for the inspection of detention centres, at least once every 3 months, by officers of the Department of Youth and Community Services.

Clause 8 provides that any Judge of the Supreme Court or District Court, any Magistrate and any member of the Children's Court may inspect any detention centre at any time.

PART 3—PERSONS ON REMAND AND PERSONS SUBJECT TO CONTROL

DIVISION 1—*Admission to detention centres*

Clause 9 requires persons on remand and persons subject to control to be detained in detention centres, except in a limited number of situations in which certain persons may be detained in police stations pending the commencement of proceedings.

Clause 10 enables prisoners (within the meaning of the Prisons Act 1952) who are under the age of 21 years to be transferred to detention centres for the purpose of serving their sentences of imprisonment in detention centres rather than in prisons.

Clause 11 requires the Director-General to determine the detention centre at which a person is to be detained, to endorse the relevant detention order with the name and address of the detention centre so determined and to send an endorsed copy of the order to the superintendent of that detention centre.

Clause 12 provides that a detention order with respect to a person is sufficient authority for the conveyance of the person to, and the detention of the person in, the detention centre determined as referred to in clause 11, and further provides that a person shall be deemed to be in lawful custody while being conveyed to such a detention centre.

Clause 13 provides for the transfer of persons between different detention centres.

DIVISION 2—*Treatment of detainees*

Clause 14 requires the Director-General to ensure that adequate arrangements exist—

- (a) to maintain the physical, psychological and emotional well-being of detainees;
- (b) to promote the social, cultural and educational development of detainees;
- (c) to maintain discipline and good order among detainees; and
- (d) to facilitate the proper control and management of detention centres.

Clause 15 provides that the superintendent of a detention centre has the custody of all detainees who are required to be detained in the detention centre.

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Clause 16 enables the regulations under the proposed Act to prescribe different classes of detainee, and further provides for the separate detention of detainees of different prescribed classes.

Clause 17 enables the superintendent of a detention centre to control, in accordance with the regulations under the proposed Act, the manner in which detainees may deal with their private property.

Clause 18 imposes certain restrictions on the kind of work or activity that a detainee may be required to carry out, and further provides that a detainee who is required to carry out any work or activity outside a detention centre shall be deemed to be in lawful custody while outside the detention centre.

Clause 19 enables the superintendent of a detention centre to order the segregation of a detainee for the purpose of protecting the personal safety of that or any other detainee, or of any other person, and further provides for the manner in which such a segregation shall be effected.

Clause 20 specifies the procedure to be followed in relation to the making of complaints concerning the misbehaviour of detainees, and further provides for the manner in which any such complaint shall be heard and determined and for appeals against decisions made in relation to any such complaint.

Clause 21 specifies the various punishments that may be imposed on a detainee in relation to misbehaviour of which the detainee has been found guilty.

Clause 22 prohibits detainees from being subjected to specified kinds of ill-treatment and provides that a person who is guilty of an offence of ill-treating a detainee is liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

DIVISION 3—Miscellaneous

Clause 23 enables persons on remand to be granted leave of absence from a detention centre for a limited number of specified purposes and provides that a person who fails to return to a detention centre within 7 days after a leave of absence expires shall be deemed to have absconded from lawful custody.

Clause 24 enables persons subject to control to be—

- (a) granted leave of absence;
- (b) removed from a detention centre and placed in the care of a person nominated by the Director-General; or
- (c) discharged from detention,

and provides that a person who fails to return to a detention centre within 7 days after a leave of absence expires shall be deemed to have absconded from lawful custody.

Clause 25 enables detainees to be removed to hospital for medical treatment and provides that a detainee who is removed to hospital shall be deemed to be in lawful custody while absent from the detention centre. It further provides that a detainee who fails to return to a detention centre after having been discharged from a hospital shall be deemed to have absconded from lawful custody.

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Clause 26 applies section 41 (5), (6) and (7) of the Prisons Act 1952 to classified persons.

Clause 27 applies section 463 of the Crimes Act 1900 to classified persons.

Clause 28 provides for the transfer from a detention centre to a prison of a classified person who is unsuitable for detention in a detention centre.

Clause 29 provides for the granting of remission to be determined in accordance with the regulations under the proposed Act.

Clause 30 requires a detainee to be discharged from a detention centre at the end of the period for which he or she is required to be detained in a detention centre.

Clause 31 provides that a person may be discharged from a detention centre within the period of 24 hours prior to the time when the person would otherwise be entitled to be discharged, and further provides that a person who would otherwise be entitled to be discharged on a Saturday, Sunday or public holiday may be discharged on an earlier day.

Clause 32 specifies when a detention order ceases to have effect.

PART 4—OFFENCES RELATING TO ABSCONDING

Clause 33 imposes a penalty of 3 months' imprisonment on any detainee who absconds or attempts to abscond from lawful custody, and further provides that the detainee's period of detention shall be extended by the corresponding period of 3 months.

Clause 34 imposes a penalty of \$250 or 3 months' imprisonment, or both (in the case of a child), and \$1,000 or 12 months' imprisonment, or both (in the case of an adult), on any person who aids a detainee in absconding or attempting to abscond from a detention centre.

Clause 35 imposes a penalty of \$1,000 or 12 months' imprisonment, or both, on any person who rescues or attempts to rescue a detainee from lawful custody.

Clause 36 imposes a penalty of 7 years' imprisonment on an officer or a member of the police force who wilfully permits a detainee to abscond from lawful custody.

Clause 37 imposes a penalty of \$1,000 or 3 years' imprisonment on a person who knowingly harbours, maintains or employs a detainee whom the person knows to have absconded from lawful custody.

PART 5—MISCELLANEOUS

Clause 38 provides for the arrest of detainees who have absconded from custody, or who are absent from a detention centre otherwise than in accordance with the proposed Act, and for their return to detention centres.

Clause 39 requires returns to be furnished to the Supreme Court, the District Court and the Children's Court in respect of all persons detained in detention centres for trial or appeal for the purpose of enabling those courts to expedite trials and appeals.

Clause 40 is an evidentiary provision regarding the admissibility and proof of certain orders under the proposed Act.

Clause 41 specifies how offences against the proposed Act shall be dealt with.

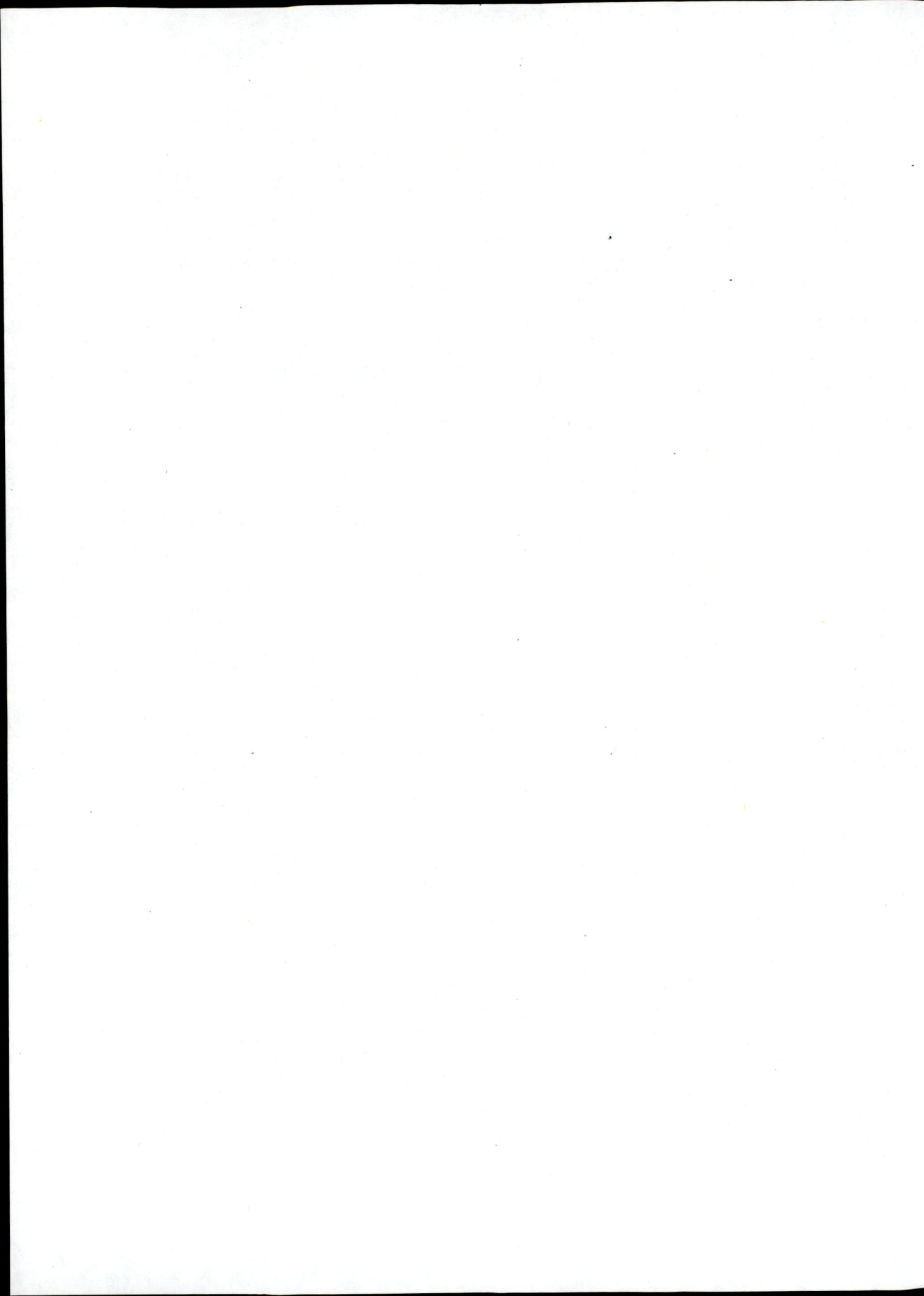
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Clause 42 enables any court of record, judge of such a court, a person constituting such a court or a coroner to require the attendance of a detainee before it or him or her in relation to any legal proceedings, inquest or inquiry.

Clause 43 preserves the Royal prerogative of mercy.

Clause 44 saves the functions of the Sheriff.

Clause 45 enables the Governor-in-Council to make regulations for the purposes of the proposed Act.



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No. , 1987

A BILL FOR

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

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

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PART 1

PRELIMINARY

Short title

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

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

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

15

Interpretation

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

"authorised justice" means—

20

(a) a Magistrate; or

(b) a justice employed in the Local Courts Administration, Attorney General's Department;

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

25

"Children's Court" means the Children's Court of New South Wales constituted by the Children's Court Act 1987;

"classified person" means—

30

(a) a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of "detention order"; or

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

"Department" means the Department of Youth and Community Services;

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“detainee” means a person subject to control or a person on remand, but does not include a person who is absent from a detention centre pursuant to an order in force under section 23 or 24;

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

“detention order” means—

10 (a) an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that the whole or any part of a term of imprisonment imposed on a person be served in a detention centre;

15 (b) an order in force under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 whereby the Children’s Court, or some other court exercising the functions of the Children’s Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister; or

(c) an order in force under section 10 of this Act whereby the Minister administering the Prisons Act 1952 has directed the transfer of a person who is a prisoner within the meaning of that Act from a prison to a detention centre;

20 “Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“imprisonment” includes penal servitude;

“misbehaviour”, in relation to a detainee, means any breach of the regulations that is committed by the detainee;

25 “officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department;

“person on remand” means—

(a) a child who is an accused person within the meaning of the Bail Act 1978 and who has not been granted bail under that Act;

30 (b) a person who is an accused person within the meaning of the Bail Act 1978 and who has not been granted bail under that Act, being a person who is charged before the Children’s Court; or

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

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

5 “prison” has the same meaning as it has in the Prisons Act 1952;

“regulation” means a regulation made under this Act;

“superintendent”, in relation to a detention centre, means the person for the time being in charge of the centre.

(2) In this Act—

10 (a) a reference to a function includes a reference to a power, authority and duty; and

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

(3) In this Act a reference to the Minister administering the Prisons Act 15 1952 includes a reference to a person authorised by that Minister to exercise the functions of that Minister under this Act.

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

20 Objects of Act

4. (1) The objects of this Act are to ensure that—

(a) persons on remand or subject to control take their places in the community as soon as possible as persons who will observe the law;

25 (b) in the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved; and

(c) satisfactory relationships are preserved or developed between persons on remand or subject to control and their families.

(2) In the administration of this Act—

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

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

PART 2

DETENTION CENTRES

Establishment of detention centres

5 (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a detention centre for the purposes of this Act.

(2) The regulations may prescribe different classes of detention centre for the detention of different classes of person.

10 (3) While a regulation referred to in subsection (2) is in force, an order under subsection (1) shall specify the class of detention centre to which the detention centre referred to in the order shall belong.

(4) The Minister may, by the order by which any premises are declared to be a detention centre or by a subsequent order published in the Gazette, give a name to the detention centre.

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

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

Inspection of detention centres by officers

20 (1) Each detention centre shall be inspected at least once every 3 months by an officer appointed by the Director-General for the purposes of this section.

(2) As soon as practicable after having inspected a detention centre, the officer shall furnish a report to the Director-General on the results of the inspection.

25 (3) A report shall deal with such matters as may be prescribed by the regulations and with such other matters as the officer considers appropriate to include in the report.

Inspection of detention centres by judges, etc.

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

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PART 3**PERSONS ON REMAND AND PERSONS SUBJECT TO CONTROL****DIVISION 1—*Admission to detention centres*****Persons on remand and persons subject to control to be detained in detention centres**

10 9. (1) Except as otherwise provided by this Act, persons on remand and persons subject to control shall be detained in detention centres.

(2) While a regulation referred to in section 5 is in force, a person shall, so far as is reasonably practicable, be detained in a detention centre that is appropriate to the class of person to which that person belongs.

15 (3) Notwithstanding subsection (1), a person on remand may be detained in a police station, during the period between the person's being charged with an offence and the person's first appearing before a court in or in connection with proceedings for the offence, but only if it is impracticable for the person to be detained in a detention centre during that period.

20 (4) A child who is detained in a police station under subsection (3) shall, so far as is reasonably practicable, be detained separately from any adults detained there.

Transfers from prisons to detention centres

25 10. (1) The Minister administering the Prisons Act 1952 may, by order in writing made with the consent of the Minister administering this Act, direct the transfer of a person who is under the age of 21 years, and who is a prisoner within the meaning of that Act, from a prison to a detention centre, there to be detained in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case
30 may be.

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(2) When a person is transferred from a prison to a detention centre—

- (a) the person ceases to be a prisoner within the meaning of the Prisons Act 1952 and becomes a person on remand or a person subject to control, as the case requires, within the meaning of this Act; and
- 5 (b) in the case of a person who becomes a person subject to control—
the period for which the person would, immediately before the
making of the order referred to in subsection (1), have been required
to be detained in prison had that order not been made shall be
deemed to be the period for which the person is required, under that
10 order, to be detained in a detention centre.

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

11. (1) As soon as practicable after a detention order has been made with respect to a person, the Director-General shall—

- 15 (a) determine the detention centre in which the person is to be detained;
- (b) endorse the order with the name and address of the detention centre so determined; and
- (c) send a copy of the order, as so endorsed, to the superintendent of the detention centre so determined.

20 (2) An order that has been endorsed in such a manner as to sufficiently describe a detention centre is not invalid merely because it has not been endorsed with the name and address of the detention centre.

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

25 12. (1) A detention order with respect to a person is sufficient authority for—

- (a) the conveyance of the person to; and
- (b) the detention of the person in,

the detention centre determined pursuant to section 11.

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

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Transfers between detention centres

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

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

DIVISION 2—*Treatment of detainees*

Functions of the Director-General

10 14. The Director-General shall ensure that adequate arrangements exist—

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

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

15 (c) to maintain discipline and good order among detainees; and

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

Detainees to be in custody of superintendent

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

20 **Separation of detainees**

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

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

Private property

17. (1) Subject to the regulations, the superintendent of a detention centre may require a detainee—

(a) to surrender to the superintendent; or

30 (b) to send away from the detention centre,

any or all property that is in the possession of the detainee.

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

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

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

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

Work to be performed by detainees

15 18. (1) The superintendent of a detention centre shall not order a detainee to carry out any work or activity other than—

(a) work in the nature of housekeeping in and about the detention centre;

(b) activities in the nature of educational or training programmes; or

20 (c) such other kinds of work or activity as may be prescribed by the regulations.

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

25 Segregation of detainees for protection

19. (1) If the superintendent of a detention centre believes on reasonable grounds that a detainee should be segregated in order to protect the personal safety of that or any other detainee, or of any other person, the superintendent may, whether or not with the consent of the detainee, direct
30 the segregation of the detainee, subject to the following conditions:

(a) the nature and duration of the segregation shall be reasonable having regard to the age, mental condition and development of the detainee;

(b) the duration of the segregation shall be as short as practicable but, in any case, shall not exceed 3 hours, or, with the approval of the
35 Director-General, 6 hours, in any period of 24 hours;

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(c) the detainee shall be provided with some means of usefully occupying himself or herself;

5 (d) the physical environment of the place where the detainee is kept segregated shall, so far as is reasonably practicable, be no less favourable than the physical environment of other places occupied by detainees in the detention centre;

(e) the detainee shall be so segregated that at all times he or she can be seen by, and may see and speak to, an officer.

10 (2) A detainee shall not be segregated under this section by way of punishment.

(3) The superintendent of the detention centre shall make a record containing such particulars as may be prescribed by the regulations of any segregation effected under this section and shall forward copies of the record to the detainee and to the Director-General within 24 hours of the
15 segregation.

(4) A detainee shall not be segregated under this section unless the superintendent of the detention centre is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.

20 **Complaints of misbehaviour**

20. (1) A complaint that a detainee is guilty of misbehaviour shall be made to such person, and in such manner, as may be prescribed by the regulations.

25 (2) Subject to subsection (3), a complaint shall be heard and determined in accordance with such procedures as may be prescribed by the regulations.

(3) The person by whom a complaint is being heard shall observe the rules of natural justice and, without limiting the generality of those rules, shall ensure that—

30 (a) reasonable notice of the substance of the complaint is given to the person to whom the complaint relates before the hearing commences;

(b) reasonable opportunity is given for the making of submissions by or on behalf of the person to whom the complaint relates (including submissions that challenge any allegations made in relation to that person) while the hearing is being conducted; and

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(c) any submissions made by or on behalf of the person to whom the complaint relates are taken into consideration in any decision made by the person by whom the complaint is being heard.

5 (4) The rules of evidence shall not apply to the hearing of a complaint under this section.

(5) If the person by whom a complaint is being heard is satisfied beyond reasonable doubt that the person to whom the complaint relates is guilty of the misbehaviour alleged in the complaint, the person by whom the complaint is being heard may—

10 (a) take no action on the matter; or

(b) punish the person to whom the complaint relates.

(6) The person by whom a complaint is being heard shall cause a record to be made—

15 (a) of any decision made by that person as to whether or not the person to whom the complaint relates is guilty of the misbehaviour alleged in the complaint;

(b) of any decision made by that person under subsection (5) in relation to a person found guilty of misbehaviour; and

20 (c) of any other decision made by that person as a consequence of the hearing.

(7) Such a record shall include particulars of the facts on which the decision was based.

(8) A copy of the record shall be given to the person to whom the complaint relates within 24 hours after the determination of the complaint.

25 (9) A detainee who is dissatisfied with a decision referred to in subsection (6) may, in accordance with the regulations, appeal to the Director-General against the decision, and the Director-General shall determine the appeal.

30 (10) In any proceedings (whether by way of appeal, review or otherwise) arising out of a decision or determination under this section, an application for relief shall not be refused merely because—

(a) the application is made by or on behalf of a detainee; or

(b) the decision or determination relates to the control, management or internal affairs of a detention centre.

*Children (Detention Centres) 1987***Punishments for misbehaviour**

21. (1) Subject to the regulations, the following punishments may be imposed on a detainee found guilty of misbehaviour:

- (a) caution;
- 5 (b) restriction from participation in sport or leisure activities for a period not exceeding 4 days;
- (c) additional duties for a period not exceeding 7 days, being duties of a constructive nature designed to promote the welfare of detainees;
- 10 (d) exclusion from, or confinement to, a place for a period not exceeding 3 hours.

(2) Punishment of a kind referred to in subsection (1) (d) may only be imposed on a detainee subject to the following conditions:

- (a) the detainee shall be provided with some means of usefully occupying himself or herself;
- 15 (b) if the punishment consists of confinement to a place, the physical environment of the place where the detainee is confined shall, so far as is reasonably practicable, be no less favourable than the physical environment of other places occupied by detainees in the detention centre;
- 20 (c) the detainee shall at all times be able to be seen by, and to see and speak to, an officer.

(3) A punishment may not be imposed on a detainee so as to interfere with visits to the detainee.

Treatment of detainees generally

25 22. (1) A detainee shall not be—

- (a) struck, cuffed, shaken or subjected to any other form of physical violence;
- (b) dosed with medicine or any other substance;
- 30 (c) compelled to hold himself or herself in a constrained or fatiguing position;
- (d) deprived of food or drink;
- (e) denied the right to read or write letters or to make or receive telephone calls;

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- (f) subjected to treatment of a kind that could reasonably be expected to be detrimental to his or her physical, psychological or emotional well-being;
- (g) subjected to treatment of a kind that is cruel, inhuman or degrading;
- 5 (h) segregated in contravention of section 19; or
- (i) subjected to treatment of a kind forbidden by the regulations.
- (2) A detainee shall not, without reasonable excuse, be handcuffed or forcibly restrained.
- (3) A person who treats a detainee, or causes a detainee to be treated, in
10 a manner prohibited by subsection (1) or (2) is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

DIVISION 3—*Miscellaneous***Persons on remand may be granted leave, etc.**

- 15 23. (1) The Director-General may, by order in writing, grant a person on remand leave to be absent from a detention centre for the purpose of—
- (a) attending a funeral;
- (b) visiting a close friend or relative who is suffering from serious sickness or disability;
- 20 (c) applying for employment or being interviewed in relation to an application for employment;
- (d) engaging in employment of a kind specified in the order;
- (e) applying for enrolment in a course of education or vocational training or being interviewed in relation to an application for
25 enrolment in such a course; or
- (f) attending a course of education or vocational training at a place specified in the order,
- or for any other purpose that the Director-General thinks proper.
- (2) An order under subsection (1) may be made subject to such conditions
30 as the Director-General may specify in the order.
- (3) Such a condition shall remain in force—
- (a) until the person to whom the order relates ceases to be a person on remand; or

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(b) for such shorter period as the Director-General may specify in the order.

(4) If, at the end of 7 days after a leave of absence granted under subsection (1) has expired, a person on remand has failed to return to the detention centre from which the person is absent, the person shall be deemed to have absconded from lawful custody.

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

24. (1) The Director-General may, by order in writing—

10 (a) grant a person subject to control leave to be absent from a detention centre;

(b) remove a person subject to control from a detention centre and place the person in the care of such person as may be specified in the order; or

(c) discharge a person subject to control from detention.

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

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

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

(5) Such a condition shall remain in force—

(a) until the person to whom the order relates ceases to be a person subject to control; or

25 (b) for such shorter period as the Director-General may specify in the order.

(6) If, at the end of 7 days after a leave of absence granted under subsection (1) (a) has expired, a person subject to control has failed to return to the detention centre from which the person is absent, the person shall be deemed to have absconded from lawful custody.

Removal to hospital of detainees

25. (1) A detainee may—

(a) by order of the Director-General; or

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(b) in cases of emergency—by order of the superintendent of the detention centre,

be removed from the detention centre to a hospital, or to some other place specified in the order, for medical treatment.

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

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

(4) When—

(a) the medical superintendent or other person in charge of a hospital certifies that a detainee who has been removed to the hospital may be discharged from the hospital;

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

(c) an order under this section with respect to a detainee is revoked,
the detainee shall forthwith return or, if an officer has taken charge of the
20 detainee, be returned to the detention centre from which the detainee was removed.

(5) If a detainee fails to return to a detention centre pursuant to the requirements of subsection (4), the detainee shall be deemed to have absconded from lawful custody.

25 Release on licence under the Prisons Act 1952

26. The provisions of section 41 (5), (6) and (7) of the Prisons Act 1952 apply to and in respect of a classified person (other than a person on remand) in the same way as they apply to and in respect of a prisoner within the meaning of that Act.

30 Release on licence under the Crimes Act 1900

27. The provisions of section 463 of the Crimes Act 1900 apply to and in respect of a classified person (other than a person on remand) in the same way as they apply to and in respect of an offender undergoing a sentence, as referred to in that section.

*Children (Detention Centres) 1987***Transfer of classified persons to prison**

28. (1) If—

- (a) a classified person is being detained in a detention centre; and
- (b) the Minister is satisfied that the person—

- 5 (i) is not profiting from the discipline and instruction in the detention centre; or
- (ii) is not, for any other reason, a suitable person for detention in a detention centre,

10 the Minister may, by order in writing made with the consent of the Minister administering the Prisons Act 1952, direct the transfer of the person from the detention centre to a prison, there to be detained according to law.

(2) When a person is transferred from a detention centre to a prison, the person ceases to be a person on remand or a person subject to control, as the case may be, within the meaning of this Act and becomes a prisoner
15 within the meaning of the Prisons Act 1952.

Remission

29. (1) A person subject to control shall, except in so far as a Judge otherwise orders under section 460A of the Crimes Act 1900, be granted remission as prescribed by the regulations.

20 (2) The determination of any remission shall be made by the Director-General and shall be final and without appeal.

(3) The granting of remission operates to reduce, by the period of the remission granted, the period for which a person is required, under the detention order by virtue of which the person is a person subject to control,
25 to be detained in a detention centre.

Discharge generally

30. (1) A person subject to control shall be discharged from detention at the end of the period for which the person is required, under the detention order by virtue of which the person is a person subject to control,
30 to be detained in a detention centre.

(2) Subsection (1) does not authorise or require a person subject to control to be discharged from detention while any other detention order is in force in respect of the person or while the person is a person on remand.

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Early discharge

31. (1) A person subject to control may be discharged from detention at any time during the period of 24 hours immediately preceding the time when the person's detention as a person subject to control would otherwise
5 terminate.

(2) A person subject to control whose detention would, but for this subsection, terminate on a Saturday, Sunday or public holiday may be discharged from detention on the last day that is not a Saturday, Sunday or public holiday.

10 Termination of detention orders

32. A detention order ceases to have effect—

- (a) in the case of a person who is discharged from detention pursuant to section 30 or 31—when the person is discharged;
 - 15 (b) in the case of a person who is discharged from detention by virtue of an order under section 24 (1) (c)—
 - (i) except as provided by subparagraph (ii)—when the person is discharged; or
 - 20 (ii) if the person is discharged subject to conditions and the order is not subsequently revoked under section 38—at the end of the period for which the person would otherwise be required, under the detention order, to be detained in a detention centre, taking into account any reduction or extension of that period under section 29 or 33;
 - 25 (c) in the case of a person the subject of an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that part only of a term of imprisonment imposed on the person be served in a detention centre—when the person is transferred to a prison in accordance with the order to serve the remainder of the term of imprisonment in a prison; or
 - 30 (d) in the case of a person who is transferred to a prison pursuant to section 28—when the person is so transferred.
-

PART 4

OFFENCES RELATING TO ABSCONDING

Absconding

5 33. (1) A detainee who absconds or attempts to abscond from lawful custody is guilty of an offence and liable to imprisonment for a period not exceeding 3 months.

(2) If a person subject to control is ordered to be imprisoned for an offence under this section—

(a) the imprisonment shall commence on the date of the order;

10 (b) the person shall, on the expiration of the period of his or her imprisonment, be returned to the custody of the superintendent of the detention centre in which the person was detained immediately before the person was ordered to be imprisoned, there to be detained in accordance with this Act until the person ceases to be a person
15 on remand or a person subject to control, as the case may be; and

(c) the period for which the person is required, under the detention order by virtue of which the person is a person subject to control, to be detained in a detention centre shall be extended by a period equivalent to the period for which the person was imprisoned.

20 (3) In subsection (2), a reference to imprisonment, in relation to a person who is found guilty of an offence under this section, includes, in the case of a person who is committed to the control of the Minister in respect of that offence, a reference to the detention of the person in a detention centre.

25 (4) A person who is deemed to have absconded from lawful custody by section 23 (4), 24 (6) or 25 (5) is not guilty of an offence under this section if the person has a reasonable excuse for having failed to return to the detention centre from which the person was absent.

Aiding abscondings

34. A person who—

30 (a) aids a detainee in absconding or attempting to abscond from lawful custody; or

(b) conveys any thing or causes any thing to be conveyed into a detention centre or to a detainee with intent to facilitate the absconding of any detainee,

is guilty of an offence and liable—

- (c) in the case of a child—to a penalty not exceeding \$250 or imprisonment for a period not exceeding 3 months, or both; or
- 5 (d) in the case of any other person—to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

Rescuing persons from lawful custody

35. A person who, by force, rescues or attempts to rescue a detainee from lawful custody is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months,
10 or both.

Permitting to abscond

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

Harbouring absconders

37. A person who knowingly harbours, maintains or employs a detainee whom the person knows to have absconded from lawful custody is guilty of an offence and liable—
- 20 (a) upon being convicted summarily—to a penalty not exceeding \$1,000; or
 - (b) upon being convicted on indictment—to imprisonment for a period not exceeding 3 years.

PART 5

25

MISCELLANEOUS

Arrest of absconders, etc.

38. (1) An officer or member of the police force may, without any authority other than that conferred by this subsection, arrest a detainee who has absconded from lawful custody.

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(2) If the Director-General is of the opinion that a person who is absent from a detention centre pursuant to an order under section 23 or 24 has failed to comply with any condition to which the order is subject, the Director-General may revoke the order and make an order for the arrest of the person.

(3) If an officer or member of the police force informs an authorised justice, on oath, that a person is absent from a detention centre otherwise than in accordance with this Act, the authorised justice may issue a warrant for the arrest of the person.

(4) An officer or member of the police force may, pursuant to an order or warrant made or issued under subsection (2) or (3), arrest the person to whom the order or warrant relates.

(5) Upon the arrest of a person under subsection (1) or (4), the person shall be conveyed to, and delivered into the custody of, the superintendent of a detention centre, to be detained in a detention centre in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be.

(6) Nothing in this section prevents proceedings from being taken against a person in respect of an offence under Part 4.

20 Expediting trials and appeals

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

(2) Such a return shall be made—

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

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

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

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

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

Children (Detention Centres) 1987

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

(c) to the senior member of the Children's Court—any member of the
Children's Court or any authorised Magistrate,

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

Evidentiary matters

40. (1) A document that purports to be—

(a) an order made under this Act; or

10 (b) a copy of such an order,

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

(2) In the absence of evidence to the contrary, the authority of the
Minister, Director-General or an officer to exercise any function conferred
15 or imposed on the Minister, Director-General or officer by or under this Act
shall be presumed.

Proceedings for offences

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

Attendance of persons subject to control before courts, etc.

42. (1) If a court of record, a judge of such a court, a person constituting
such a court or a coroner is satisfied that it is desirable that a detainee
should be in attendance before it or him or her for the purposes of any legal
25 proceedings, inquest or inquiry then pending, the court, judge, person or
coroner, as the case may be, may make an order directing the superintendent
of the detention centre in which the detainee is detained to cause the
detainee to be produced in court or at the place of the inquest or inquiry.

(2) An order in force under this section is sufficient authority for the
30 superintendent of the detention centre in which the detainee is detained to
cause the detainee to be produced in accordance with the terms of the order.

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(3) A detainee produced in accordance with an order in force under this section shall, while in the actual custody of the superintendent of a detention centre, an officer or a member of the police force, be deemed to be in lawful custody and the superintendent, officer or member of the police force shall, as soon as the court, judge, person or coroner by which or by whom the order was made so permits, return the detainee to the detention centre from which the person was produced.

Royal prerogative of mercy preserved

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

Saving as to functions of Sheriff

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

15 Regulations

45. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the control, management, good government, supervision and inspection of detention centres;
- (b) the maintenance of the physical, psychological and emotional well-being of detainees;
- (c) the promotion of the social, cultural and educational development of detainees; and
- (d) the conduct and functions of persons employed in or about detention centres.

(2) A provision of a regulation may—

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

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or may do any combination of those things.

(3) A regulation may create an offence punishable (except in the case of misbehaviour) by a penalty not exceeding \$500.



CHILDREN (DETENTION CENTRES) BILL 1987

NEW SOUTH WALES



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This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, , 1987*

NEW SOUTH WALES



Act No. , 1987

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

Children (Detention Centres) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5

PART 1

PRELIMINARY

Short title

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

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

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

Interpretation

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

"authorised justice" means—

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

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

25 "Children's Court" means the Children's Court of New South Wales constituted by the Children's Court Act 1987;

"classified person" means—

- (a) a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of "detention order"; or
30 (b) a person who is a person subject to control by virtue of an order referred to in paragraph (a) or (c) of that definition;

"Department" means the Department of Youth and Community Services;

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“detainee” means a person subject to control or a person on remand, but does not include a person who is absent from a detention centre pursuant to an order in force under section 23 or 24;

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

“detention order” means—

10 (a) an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that the whole or any part of a term of imprisonment imposed on a person be served in a detention centre;

15 (b) an order in force under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 whereby the Children’s Court, or some other court exercising the functions of the Children’s Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister; or

(c) an order in force under section 10 of this Act whereby the Minister administering the Prisons Act 1952 has directed the transfer of a person who is a prisoner within the meaning of that Act from a prison to a detention centre;

20 “Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“imprisonment” includes penal servitude;

“misbehaviour”, in relation to a detainee, means any breach of the regulations that is committed by the detainee;

25 “officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department;

“person on remand” means—

(a) a child who is an accused person within the meaning of the Bail Act 1978 and who has not been released on bail under that Act;

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

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

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

5 “prison” has the same meaning as it has in the Prisons Act 1952;

“regulation” means a regulation made under this Act;

“superintendent”, in relation to a detention centre, means the person for the time being in charge of the centre.

(2) In this Act—

10 (a) a reference to a function includes a reference to a power, authority and duty; and

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

(3) In this Act a reference to the Minister administering the Prisons Act 15 1952 includes a reference to a person authorised by that Minister to exercise the functions of that Minister under this Act.

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

20 **Objects of Act**

4. (1) The objects of this Act are to ensure that—

(a) persons on remand or subject to control take their places in the community as soon as possible as persons who will observe the law;

25 (b) in the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved; and

(c) satisfactory relationships are preserved or developed between persons on remand or subject to control and their families.

(2) In the administration of this Act—

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

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

PART 2

DETENTION CENTRES

Establishment of detention centres

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

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

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

Inspection of detention centres by officers

- 20 7. (1) Each detention centre shall be inspected at least once every 3 months by an officer appointed by the Director-General for the purposes of this section.
- (2) As soon as practicable after having inspected a detention centre, the officer shall furnish a report to the Director-General on the results of the inspection.
- 25 (3) A report shall deal with such matters as may be prescribed by the regulations and with such other matters as the officer considers appropriate to include in the report.

Inspection of detention centres by judges, etc.

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

5

PART 3**PERSONS ON REMAND AND PERSONS SUBJECT TO CONTROL****DIVISION 1—*Admission to detention centres*****Persons on remand and persons subject to control to be detained in detention centres**

10 9. (1) Except as otherwise provided by this Act, persons on remand and persons subject to control shall be detained in detention centres.

(2) While a regulation referred to in section 5 is in force, a person shall, so far as is reasonably practicable, be detained in a detention centre that is appropriate to the class of person to which that person belongs.

15 (3) Notwithstanding subsection (1), a person on remand may be detained in a police station, during the period between the person's being charged with an offence and the person's first appearing before a court in or in connection with proceedings for the offence, but only if it is impracticable for the person to be detained in a detention centre during that period.

20 (4) A child who is detained in a police station under subsection (3) shall, so far as is reasonably practicable, be detained separately from any adults detained there.

Transfers from prisons to detention centres

25 10. (1) The Minister administering the Prisons Act 1952 may, by order
30 in writing made with the consent of the Minister administering this Act, direct the transfer of a person who is under the age of 21 years, and who is a prisoner within the meaning of that Act, from a prison to a detention centre, there to be detained in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be.

Children (Detention Centres) 1987

(2) When a person is transferred from a prison to a detention centre—

- (a) the person ceases to be a prisoner within the meaning of the Prisons Act 1952 and becomes a person on remand or a person subject to control, as the case requires, within the meaning of this Act; and
- 5 (b) in the case of a person who becomes a person subject to control—
the period for which the person would, immediately before the
making of the order referred to in subsection (1), have been required
to be detained in prison had that order not been made shall be
10 deemed to be the period for which the person is required, under that
order, to be detained in a detention centre.

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

11. (1) As soon as practicable after a detention order has been made with respect to a person, the Director-General shall—

- 15 (a) determine the detention centre in which the person is to be detained;
- (b) endorse the order with the name and address of the detention centre so determined; and
- (c) send a copy of the order, as so endorsed, to the superintendent of the detention centre so determined.

20 (2) An order that has been endorsed in such a manner as to sufficiently describe a detention centre is not invalid merely because it has not been endorsed with the name and address of the detention centre.

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

25 12. (1) A detention order with respect to a person is sufficient authority for—

- (a) the conveyance of the person to; and
- (b) the detention of the person in,

the detention centre determined pursuant to section 11.

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

Transfers between detention centres

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

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

DIVISION 2—Treatment of detainees**Functions of the Director-General**

14. The Director-General shall ensure that adequate arrangements
10 exist—

- (a) to maintain the physical, psychological and emotional well-being of detainees;
- (b) to promote the social, cultural and educational development of detainees;
- 15 (c) to maintain discipline and good order among detainees; and
- (d) to facilitate the proper control and management of detention centres.

Detainees to be in custody of superintendent

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

20 Separation of detainees

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

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

Private property

17. (1) Subject to the regulations, the superintendent of a detention centre may require a detainee—

- (a) to surrender to the superintendent; or
- 30 (b) to send away from the detention centre,
any or all property that is in the possession of the detainee.

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

- 5 (a) until the detainee is discharged from the detention centre, in which case it shall be returned to the detainee immediately before the detainee is discharged from the detention centre; or
- (b) until the detainee is transferred to another detention centre or to a prison, in which case it shall be sent to the superintendent of the other detention centre or the governor of the prison, as the case
- 10 requires.

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

Work to be performed by detainees

15 **18. (1)** The superintendent of a detention centre shall not order a detainee to carry out any work or activity other than—

- (a) work in the nature of housekeeping in and about the detention centre;
- (b) activities in the nature of educational or training programmes; or
- 20 (c) such other kinds of work or activity as may be prescribed by the regulations.

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

25 Segregation of detainees for protection

19. (1) If the superintendent of a detention centre believes on reasonable grounds that a detainee should be segregated in order to protect the personal safety of that or any other detainee, or of any other person, the superintendent may, whether or not with the consent of the detainee, direct

30 the segregation of the detainee, subject to the following conditions:

- (a) the nature and duration of the segregation shall be reasonable having regard to the age, mental condition and development of the detainee;
- (b) the duration of the segregation shall be as short as practicable but, in any case, shall not exceed 3 hours, or, with the approval of the
- 35 Director-General, 6 hours, in any period of 24 hours;

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(c) the detainee shall be provided with some means of usefully occupying himself or herself;

5 (d) the physical environment of the place where the detainee is kept segregated shall, so far as is reasonably practicable, be no less favourable than the physical environment of other places occupied by detainees in the detention centre;

(e) the detainee shall be so segregated that at all times he or she can be seen by, and may see and speak to, an officer.

10 (2) A detainee shall not be segregated under this section by way of punishment.

(3) The superintendent of the detention centre shall make a record containing such particulars as may be prescribed by the regulations of any segregation effected under this section and shall forward copies of the record to the detainee and to the Director-General within 24 hours of the
15 segregation.

(4) A detainee shall not be segregated under this section unless the superintendent of the detention centre is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.

20 **Complaints of misbehaviour**

20. (1) A complaint that a detainee is guilty of misbehaviour shall be made to such person, and in such manner, as may be prescribed by the regulations.

(2) Subject to subsection (3), a complaint shall be heard and determined
25 in accordance with such procedures as may be prescribed by the regulations.

(3) The person by whom a complaint is being heard shall observe the rules of natural justice and, without limiting the generality of those rules, shall ensure that—

30 (a) reasonable notice of the substance of the complaint is given to the person to whom the complaint relates before the hearing commences;

(b) reasonable opportunity is given for the making of submissions by or on behalf of the person to whom the complaint relates (including submissions that challenge any allegations made in relation to that person) while the hearing is being conducted; and

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(c) any submissions made by or on behalf of the person to whom the complaint relates are taken into consideration in any decision made by the person by whom the complaint is being heard.

5 (4) The rules of evidence shall not apply to the hearing of a complaint under this section.

(5) If the person by whom a complaint is being heard is satisfied beyond reasonable doubt that the person to whom the complaint relates is guilty of the misbehaviour alleged in the complaint, the person by whom the complaint is being heard may—

10 (a) take no action on the matter; or

(b) punish the person to whom the complaint relates.

(6) The person by whom a complaint is being heard shall cause a record to be made—

15 (a) of any decision made by that person as to whether or not the person to whom the complaint relates is guilty of the misbehaviour alleged in the complaint;

(b) of any decision made by that person under subsection (5) in relation to a person found guilty of misbehaviour; and

20 (c) of any other decision made by that person as a consequence of the hearing.

(7) Such a record shall include particulars of the facts on which the decision was based.

(8) A copy of the record shall be given to the person to whom the complaint relates within 24 hours after the determination of the complaint.

25 (9) A detainee who is dissatisfied with a decision referred to in subsection (6) may, in accordance with the regulations, appeal to the Director-General against the decision, and the Director-General shall determine the appeal.

30 (10) In any proceedings (whether by way of appeal, review or otherwise) arising out of a decision or determination under this section, an application for relief shall not be refused merely because—

(a) the application is made by or on behalf of a detainee; or

(b) the decision or determination relates to the control, management or internal affairs of a detention centre.

Punishments for misbehaviour

21. (1) Subject to the regulations, the following punishments may be imposed on a detainee found guilty of misbehaviour:

- (a) caution;
- 5 (b) restriction from participation in sport or leisure activities for a period not exceeding 4 days;
- (c) additional duties for a period not exceeding 7 days, being duties of a constructive nature designed to promote the welfare of detainees;
- 10 (d) exclusion from, or confinement to, a place for a period not exceeding 3 hours.

(2) Punishment of a kind referred to in subsection (1) (d) may only be imposed on a detainee subject to the following conditions:

- (a) the detainee shall be provided with some means of usefully occupying himself or herself;
- 15 (b) if the punishment consists of confinement to a place, the physical environment of the place where the detainee is confined shall, so far as is reasonably practicable, be no less favourable than the physical environment of other places occupied by detainees in the detention centre;
- 20 (c) the detainee shall at all times be able to be seen by, and to see and speak to, an officer.

(3) A punishment may not be imposed on a detainee so as to interfere with visits to the detainee.

Treatment of detainees generally

25 22. (1) A detainee shall not be—

- (a) struck, cuffed, shaken or subjected to any other form of physical violence;
- (b) dosed with medicine or any other substance;
- 30 (c) compelled to hold himself or herself in a constrained or fatiguing position;
- (d) deprived of food or drink;
- (e) denied the right to read or write letters or to make or receive telephone calls;

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- (f) subjected to treatment of a kind that could reasonably be expected to be detrimental to his or her physical, psychological or emotional well-being;
 - (g) subjected to treatment of a kind that is cruel, inhuman or degrading;
 - 5 (h) segregated in contravention of section 19; or
 - (i) subjected to treatment of a kind forbidden by the regulations.
- (2) A detainee shall not, without reasonable excuse, be handcuffed or forcibly restrained.
- (3) A person who treats a detainee, or causes a detainee to be treated, in
10 a manner prohibited by subsection (1) or (2) is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

DIVISION 3—*Miscellaneous***Persons on remand may be granted leave, etc.**

- 15 23. (1) The Director-General may, by order in writing, grant a person on remand leave to be absent from a detention centre for the purpose of—
- (a) attending a funeral;
 - (b) visiting a close friend or relative who is suffering from serious sickness or disability;
 - 20 (c) applying for employment or being interviewed in relation to an application for employment;
 - (d) engaging in employment of a kind specified in the order;
 - (e) applying for enrolment in a course of education or vocational training or being interviewed in relation to an application for
25 enrolment in such a course; or
 - (f) attending a course of education or vocational training at a place specified in the order,
- or for any other purpose that the Director-General thinks proper.
- (2) An order under subsection (1) may be made subject to such conditions
30 as the Director-General may specify in the order.
- (3) Such a condition shall remain in force—
- (a) until the person to whom the order relates ceases to be a person on remand; or

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(b) for such shorter period as the Director-General may specify in the order.

5 (4) If, at the end of 7 days after a leave of absence granted under subsection (1) has expired, a person on remand has failed to return to the detention centre from which the person is absent, the person shall be deemed to have absconded from lawful custody.

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

24. (1) The Director-General may, by order in writing—

- 10 (a) grant a person subject to control leave to be absent from a detention centre;
- (b) remove a person subject to control from a detention centre and place the person in the care of such person as may be specified in the order; or
- (c) discharge a person subject to control from detention.

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

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

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

(5) Such a condition shall remain in force—

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

(6) If, at the end of 7 days after a leave of absence granted under subsection (1) (a) has expired, a person subject to control has failed to return to the detention centre from which the person is absent, the person shall be deemed to have absconded from lawful custody.

30

Removal to hospital of detainees

25. (1) A detainee may—

- (a) by order of the Director-General; or

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(b) in cases of emergency—by order of the superintendent of the detention centre,

be removed from the detention centre to a hospital, or to some other place specified in the order, for medical treatment.

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

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

(4) When—

(a) the medical superintendent or other person in charge of a hospital certifies that a detainee who has been removed to the hospital may be discharged from the hospital;

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

(c) an order under this section with respect to a detainee is revoked, the detainee shall forthwith return or, if an officer has taken charge of the
20 detainee, be returned to the detention centre from which the detainee was removed.

(5) If a detainee fails to return to a detention centre pursuant to the requirements of subsection (4), the detainee shall be deemed to have absconded from lawful custody.

25 Release on licence under the Prisons Act 1952

26. The provisions of section 41 (5), (6) and (7) of the Prisons Act 1952 apply to and in respect of a classified person (other than a person on remand) in the same way as they apply to and in respect of a prisoner within the meaning of that Act.

30 Release on licence under the Crimes Act 1900

27. The provisions of section 463 of the Crimes Act 1900 apply to and in respect of a classified person (other than a person on remand) in the same way as they apply to and in respect of an offender undergoing a sentence, as referred to in that section.

Transfer of classified persons to prison**28. (1) If—**

- (a) a classified person is being detained in a detention centre; and
- (b) the Minister is satisfied that the person—

- 5 (i) is not profiting from the discipline and instruction in the detention centre; or
- (ii) is not, for any other reason, a suitable person for detention in a detention centre,

10 the Minister may, by order in writing made with the consent of the Minister administering the Prisons Act 1952, direct the transfer of the person from the detention centre to a prison, there to be detained according to law.

15 (2) When a person is transferred from a detention centre to a prison, the person ceases to be a person on remand or a person subject to control, as the case may be, within the meaning of this Act and becomes a prisoner within the meaning of the Prisons Act 1952.

Remission

29. (1) A person subject to control shall, except in so far as a Judge otherwise orders under section 460A of the Crimes Act 1900, be granted remission as prescribed by the regulations.

20 (2) The determination of any remission shall be made by the Director-General and shall be final and without appeal.

25 (3) The granting of remission operates to reduce, by the period of the remission granted, the period for which a person is required, under the detention order by virtue of which the person is a person subject to control, to be detained in a detention centre.

Discharge generally

30 (1) A person subject to control shall be discharged from detention at the end of the period for which the person is required, under the detention order by virtue of which the person is a person subject to control, to be detained in a detention centre.

(2) Subsection (1) does not authorise or require a person subject to control to be discharged from detention while any other detention order is in force in respect of the person or while the person is a person on remand.

Early discharge

31. (1) A person subject to control may be discharged from detention at any time during the period of 24 hours immediately preceding the time when the person's detention as a person subject to control would otherwise terminate.

(2) A person subject to control whose detention would, but for this subsection, terminate on a Saturday, Sunday or public holiday may be discharged from detention on the last day that is not a Saturday, Sunday or public holiday.

10 Termination of detention orders

32. A detention order ceases to have effect—

- (a) in the case of a person who is discharged from detention pursuant to section 30 or 31—when the person is discharged;
- 15 (b) in the case of a person who is discharged from detention by virtue of an order under section 24 (1) (c)—
- (i) except as provided by subparagraph (ii)—when the person is discharged; or
- 20 (ii) if the person is discharged subject to conditions and the order is not subsequently revoked under section 38—at the end of the period for which the person would otherwise be required, under the detention order, to be detained in a detention centre, taking into account any reduction or extension of that period under section 29 or 33;
- 25 (c) in the case of a person the subject of an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that part only of a term of imprisonment imposed on the person be served in a detention centre—when the person is transferred to a prison in accordance with the order to serve the remainder of the term of imprisonment in a prison; or
- 30 (d) in the case of a person who is transferred to a prison pursuant to section 28—when the person is so transferred.
-

PART 4

OFFENCES RELATING TO ABSCONDING

Absconding

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

(2) If a person subject to control is ordered to be imprisoned for an offence under this section—

- (a) the imprisonment shall commence on the date of the order;
- 10 (b) the person shall, on the expiration of the period of his or her imprisonment, be returned to the custody of the superintendent of the detention centre in which the person was detained immediately before the person was ordered to be imprisoned, there to be detained in accordance with this Act until the person ceases to be a person
15 on remand or a person subject to control, as the case may be; and
- (c) the period for which the person is required, under the detention order by virtue of which the person is a person subject to control, to be detained in a detention centre shall be extended by a period equivalent to the period for which the person was imprisoned.

20 (3) In subsection (2), a reference to imprisonment, in relation to a person who is found guilty of an offence under this section, includes, in the case of a person who is committed to the control of the Minister in respect of that offence, a reference to the detention of the person in a detention centre.

25 (4) A person who is deemed to have absconded from lawful custody by section 23 (4), 24 (6) or 25 (5) is not guilty of an offence under this section if the person has a reasonable excuse for having failed to return to the detention centre from which the person was absent.

Aiding abscondings

34. A person who—

- 30 (a) aids a detainee in absconding or attempting to abscond from lawful custody; or
- (b) conveys any thing or causes any thing to be conveyed into a detention centre or to a detainee with intent to facilitate the absconding of any detainee,

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is guilty of an offence and liable—

- (c) in the case of a child—to a penalty not exceeding \$250 or imprisonment for a period not exceeding 3 months, or both; or
- 5 (d) in the case of any other person—to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

Rescuing persons from lawful custody

35. A person who, by force, rescues or attempts to rescue a detainee from lawful custody is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months,
10 or both.

Permitting to abscond

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

Harbouring absconders

37. A person who knowingly harbours, maintains or employs a detainee whom the person knows to have absconded from lawful custody is guilty of an offence and liable—
- 20 (a) upon being convicted summarily—to a penalty not exceeding \$1,000; or
 - (b) upon being convicted on indictment—to imprisonment for a period not exceeding 3 years.

 PART 5

25

MISCELLANEOUS

Arrest of absconders, etc.

38. (1) An officer or member of the police force may, without any authority other than that conferred by this subsection, arrest a detainee who has absconded from lawful custody.

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(2) If the Director-General is of the opinion that a person who is absent from a detention centre pursuant to an order under section 23 or 24 has failed to comply with any condition to which the order is subject, the Director-General may revoke the order and make an order for the arrest of
5 the person.

(3) If an officer or member of the police force informs an authorised justice, on oath, that a person is absent from a detention centre otherwise than in accordance with this Act, the authorised justice may issue a warrant for the arrest of the person.

10 (4) An officer or member of the police force may, pursuant to an order or warrant made or issued under subsection (2) or (3), arrest the person to whom the order or warrant relates.

(5) Upon the arrest of a person under subsection (1) or (4), the person shall be conveyed to, and delivered into the custody of, the superintendent
15 of a detention centre, to be detained in a detention centre in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be.

(6) Nothing in this section prevents proceedings from being taken against a person in respect of an offence under Part 4.

20 **Expediting trials and appeals**

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

25 (2) Such a return shall be made—

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

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

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

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

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

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

(c) to the senior member of the Children's Court—any member of the Children's Court or any authorised Magistrate,

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

Evidentiary matters

40. (1) A document that purports to be—

(a) an order made under this Act; or

10 (b) a copy of such an order,

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

(2) In the absence of evidence to the contrary, the authority of the Minister, Director-General or an officer to exercise any function conferred
15 or imposed on the Minister, Director-General or officer by or under this Act shall be presumed.

Proceedings for offences

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

Attendance of persons subject to control before courts, etc.

42. (1) If a court of record, a judge of such a court, a person constituting such a court or a coroner is satisfied that it is desirable that a detainee should be in attendance before it or him or her for the purposes of any legal
25 proceedings, inquest or inquiry then pending, the court, judge, person or coroner, as the case may be, may make an order directing the superintendent of the detention centre in which the detainee is detained to cause the detainee to be produced in court or at the place of the inquest or inquiry.

(2) An order in force under this section is sufficient authority for the
30 superintendent of the detention centre in which the detainee is detained to cause the detainee to be produced in accordance with the terms of the order.

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(3) A detainee produced in accordance with an order in force under this section shall, while in the actual custody of the superintendent of a detention centre, an officer or a member of the police force, be deemed to be in lawful custody and the superintendent, officer or member of the police force shall, as soon as the court, judge, person or coroner by which or by whom the order was made so permits, return the detainee to the detention centre from which the person was produced.

Royal prerogative of mercy preserved

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

Saving as to functions of Sheriff

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

15 Regulations

45. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

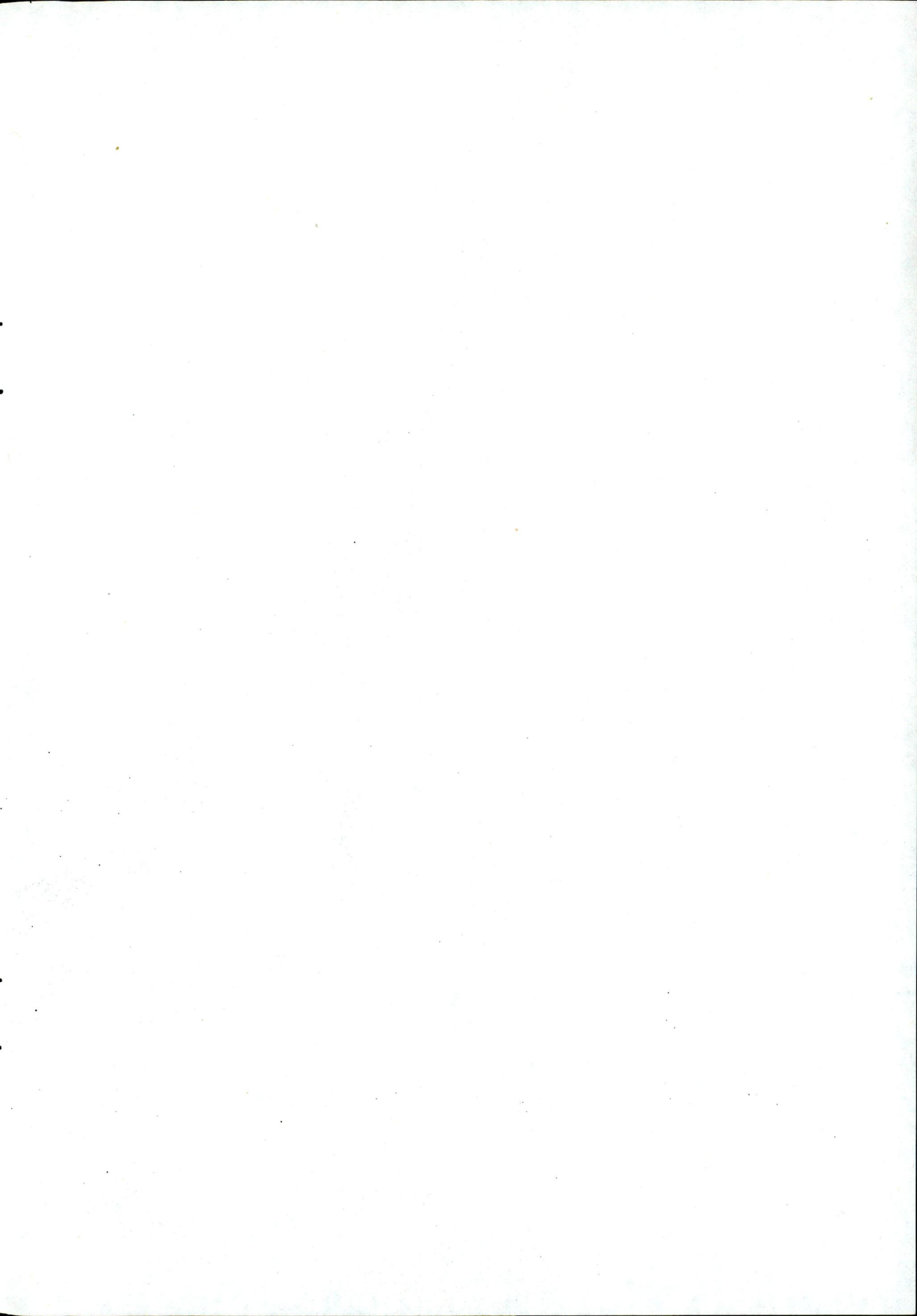
- (a) the control, management, good government, supervision and inspection of detention centres;
- (b) the maintenance of the physical, psychological and emotional well-being of detainees;
- (c) the promotion of the social, cultural and educational development of detainees; and
- (d) the conduct and functions of persons employed in or about detention centres.

(2) A provision of a regulation may—

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

or may do any combination of those things.

(3) A regulation may create an offence punishable (except in the case of misbehaviour) by a penalty not exceeding \$500.



CHILDREN (DETENTION CENTRES) ACT 1987 No. 57

NEW SOUTH WALES



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CHILDREN (DETENTION CENTRES) ACT 1987 No. 57

NEW SOUTH WALES



Act No. 57, 1987

An Act with respect to the detention of children and other young persons who are on remand or who have been found guilty of criminal offences.
[Assented to 29 May 1987]

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

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

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

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

Interpretation

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

"authorised justice" means—

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

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

"Children's Court" means the Children's Court of New South Wales constituted by the Children's Court Act 1987;

"classified person" means—

- (a) a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of "detention order"; or
- (b) a person who is a person subject to control by virtue of an order referred to in paragraph (a) or (c) of that definition;

"Department" means the Department of Youth and Community Services;

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“detainee” means a person subject to control or a person on remand, but does not include a person who is absent from a detention centre pursuant to an order in force under section 23 or 24;

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

“detention order” means—

- (a) an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that the whole or any part of a term of imprisonment imposed on a person be served in a detention centre;
- (b) an order in force under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 whereby the Children’s Court, or some other court exercising the functions of the Children’s Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister; or
- (c) an order in force under section 10 of this Act whereby the Minister administering the Prisons Act 1952 has directed the transfer of a person who is a prisoner within the meaning of that Act from a prison to a detention centre;

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

“imprisonment” includes penal servitude;

“misbehaviour”, in relation to a detainee, means any breach of the regulations that is committed by the detainee;

“officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department;

“person on remand” means—

- (a) a child who is an accused person within the meaning of the Bail Act 1978 and who has not been released on bail under that Act;
- (b) a person who is an accused person within the meaning of the Bail Act 1978 and who has not been released on bail under that Act, being a person who is charged before the Children’s Court; or
- (c) a person who is an accused person within the meaning of the Bail Act 1978 and who has not been released on bail under that Act, being a person who is a person on remand by virtue of an order referred to in paragraph (c) of the definition of “detention order”;

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

“prison” has the same meaning as it has in the Prisons Act 1952;

“regulation” means a regulation made under this Act;

“superintendent”, in relation to a detention centre, means the person for the time being in charge of the centre.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

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

(3) In this Act a reference to the Minister administering the Prisons Act 1952 includes a reference to a person authorised by that Minister to exercise the functions of that Minister under this Act.

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

Objects of Act

4. (1) The objects of this Act are to ensure that—

(a) persons on remand or subject to control take their places in the community as soon as possible as persons who will observe the law;

(b) in the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved; and

(c) satisfactory relationships are preserved or developed between persons on remand or subject to control and their families.

(2) In the administration of this Act—

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

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

PART 2

DETENTION CENTRES

Establishment of detention centres

5. (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a detention centre for the purposes of this Act.

(2) The regulations may prescribe different classes of detention centre for the detention of different classes of person.

(3) While a regulation referred to in subsection (2) is in force, an order under subsection (1) shall specify the class of detention centre to which the detention centre referred to in the order shall belong.

(4) The Minister may, by the order by which any premises are declared to be a detention centre or by a subsequent order published in the Gazette, give a name to the detention centre.

Director-General to have control and management of detention centres

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

Inspection of detention centres by officers

7. (1) Each detention centre shall be inspected at least once every 3 months by an officer appointed by the Director-General for the purposes of this section.

(2) As soon as practicable after having inspected a detention centre, the officer shall furnish a report to the Director-General on the results of the inspection.

(3) A report shall deal with such matters as may be prescribed by the regulations and with such other matters as the officer considers appropriate to include in the report.

Inspection of detention centres by judges, etc.

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

PART 3**PERSONS ON REMAND AND PERSONS SUBJECT TO CONTROL****DIVISION 1—*Admission to detention centres*****Persons on remand and persons subject to control to be detained in detention centres**

9. (1) Except as otherwise provided by this Act, persons on remand and persons subject to control shall be detained in detention centres.

(2) While a regulation referred to in section 5 is in force, a person shall, so far as is reasonably practicable, be detained in a detention centre that is appropriate to the class of person to which that person belongs.

(3) Notwithstanding subsection (1), a person on remand may be detained in a police station, during the period between the person's being charged with an offence and the person's first appearing before a court in or in connection with proceedings for the offence, but only if it is impracticable for the person to be detained in a detention centre during that period.

(4) A child who is detained in a police station under subsection (3) shall, so far as is reasonably practicable, be detained separately from any adults detained there.

Transfers from prisons to detention centres

10. (1) The Minister administering the Prisons Act 1952 may, by order in writing made with the consent of the Minister administering this Act, direct the transfer of a person who is under the age of 21 years, and who is a prisoner within the meaning of that Act, from a prison to a detention centre, there to be detained in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be.

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- (2) When a person is transferred from a prison to a detention centre—
- (a) the person ceases to be a prisoner within the meaning of the Prisons Act 1952 and becomes a person on remand or a person subject to control, as the case requires, within the meaning of this Act; and
 - (b) in the case of a person who becomes a person subject to control— the period for which the person would, immediately before the making of the order referred to in subsection (1), have been required to be detained in prison had that order not been made shall be deemed to be the period for which the person is required, under that order, to be detained in a detention centre.

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

11. (1) As soon as practicable after a detention order has been made with respect to a person, the Director-General shall—

- (a) determine the detention centre in which the person is to be detained;
- (b) endorse the order with the name and address of the detention centre so determined; and
- (c) send a copy of the order, as so endorsed, to the superintendent of the detention centre so determined.

(2) An order that has been endorsed in such a manner as to sufficiently describe a detention centre is not invalid merely because it has not been endorsed with the name and address of the detention centre.

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

12. (1) A detention order with respect to a person is sufficient authority for—

- (a) the conveyance of the person to; and
- (b) the detention of the person in,

the detention centre determined pursuant to section 11.

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

Transfers between detention centres

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

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

DIVISION 2—Treatment of detainees**Functions of the Director-General**

14. The Director-General shall ensure that adequate arrangements exist—

- (a) to maintain the physical, psychological and emotional well-being of detainees;
- (b) to promote the social, cultural and educational development of detainees;
- (c) to maintain discipline and good order among detainees; and
- (d) to facilitate the proper control and management of detention centres.

Detainees to be in custody of superintendent

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

Separation of detainees

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

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

Private property

17. (1) Subject to the regulations, the superintendent of a detention centre may require a detainee—

- (a) to surrender to the superintendent; or
- (b) to send away from the detention centre,

any or all property that is in the possession of the detainee.

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

- (a) until the detainee is discharged from the detention centre, in which case it shall be returned to the detainee immediately before the detainee is discharged from the detention centre; or
- (b) until the detainee is transferred to another detention centre or to a prison, in which case it shall be sent to the superintendent of the other detention centre or the governor of the prison, as the case requires.

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

Work to be performed by detainees

18. (1) The superintendent of a detention centre shall not order a detainee to carry out any work or activity other than—

- (a) work in the nature of housekeeping in and about the detention centre;
- (b) activities in the nature of educational or training programmes; or
- (c) such other kinds of work or activity as may be prescribed by the regulations.

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

Segregation of detainees for protection

19. (1) If the superintendent of a detention centre believes on reasonable grounds that a detainee should be segregated in order to protect the personal safety of that or any other detainee, or of any other person, the superintendent may, whether or not with the consent of the detainee, direct the segregation of the detainee, subject to the following conditions:

- (a) the nature and duration of the segregation shall be reasonable having regard to the age, mental condition and development of the detainee;
- (b) the duration of the segregation shall be as short as practicable but, in any case, shall not exceed 3 hours, or, with the approval of the Director-General, 6 hours, in any period of 24 hours;

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- (c) the detainee shall be provided with some means of usefully occupying himself or herself;
- (d) the physical environment of the place where the detainee is kept segregated shall, so far as is reasonably practicable, be no less favourable than the physical environment of other places occupied by detainees in the detention centre;
- (e) the detainee shall be so segregated that at all times he or she can be seen by, and may see and speak to, an officer.

(2) A detainee shall not be segregated under this section by way of punishment.

(3) The superintendent of the detention centre shall make a record containing such particulars as may be prescribed by the regulations of any segregation effected under this section and shall forward copies of the record to the detainee and to the Director-General within 24 hours of the segregation.

(4) A detainee shall not be segregated under this section unless the superintendent of the detention centre is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.

Complaints of misbehaviour

20. (1) A complaint that a detainee is guilty of misbehaviour shall be made to such person, and in such manner, as may be prescribed by the regulations.

(2) Subject to subsection (3), a complaint shall be heard and determined in accordance with such procedures as may be prescribed by the regulations.

(3) The person by whom a complaint is being heard shall observe the rules of natural justice and, without limiting the generality of those rules, shall ensure that—

- (a) reasonable notice of the substance of the complaint is given to the person to whom the complaint relates before the hearing commences;
- (b) reasonable opportunity is given for the making of submissions by or on behalf of the person to whom the complaint relates (including submissions that challenge any allegations made in relation to that person) while the hearing is being conducted; and

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- (c) any submissions made by or on behalf of the person to whom the complaint relates are taken into consideration in any decision made by the person by whom the complaint is being heard.
- (4) The rules of evidence shall not apply to the hearing of a complaint under this section.
- (5) If the person by whom a complaint is being heard is satisfied beyond reasonable doubt that the person to whom the complaint relates is guilty of the misbehaviour alleged in the complaint, the person by whom the complaint is being heard may—
- (a) take no action on the matter; or
 - (b) punish the person to whom the complaint relates.
- (6) The person by whom a complaint is being heard shall cause a record to be made—
- (a) of any decision made by that person as to whether or not the person to whom the complaint relates is guilty of the misbehaviour alleged in the complaint;
 - (b) of any decision made by that person under subsection (5) in relation to a person found guilty of misbehaviour; and
 - (c) of any other decision made by that person as a consequence of the hearing.
- (7) Such a record shall include particulars of the facts on which the decision was based.
- (8) A copy of the record shall be given to the person to whom the complaint relates within 24 hours after the determination of the complaint.
- (9) A detainee who is dissatisfied with a decision referred to in subsection (6) may, in accordance with the regulations, appeal to the Director-General against the decision, and the Director-General shall determine the appeal.
- (10) In any proceedings (whether by way of appeal, review or otherwise) arising out of a decision or determination under this section, an application for relief shall not be refused merely because—
- (a) the application is made by or on behalf of a detainee; or
 - (b) the decision or determination relates to the control, management or internal affairs of a detention centre.

Punishments for misbehaviour

21. (1) Subject to the regulations, the following punishments may be imposed on a detainee found guilty of misbehaviour:

- (a) caution;
- (b) restriction from participation in sport or leisure activities for a period not exceeding 4 days;
- (c) additional duties for a period not exceeding 7 days, being duties of a constructive nature designed to promote the welfare of detainees;
- (d) exclusion from, or confinement to, a place for a period not exceeding 3 hours.

(2) Punishment of a kind referred to in subsection (1) (d) may only be imposed on a detainee subject to the following conditions:

- (a) the detainee shall be provided with some means of usefully occupying himself or herself;
- (b) if the punishment consists of confinement to a place, the physical environment of the place where the detainee is confined shall, so far as is reasonably practicable, be no less favourable than the physical environment of other places occupied by detainees in the detention centre;
- (c) the detainee shall at all times be able to be seen by, and to see and speak to, an officer.

(3) A punishment may not be imposed on a detainee so as to interfere with visits to the detainee.

Treatment of detainees generally

22. (1) A detainee shall not be—

- (a) struck, cuffed, shaken or subjected to any other form of physical violence;
- (b) dosed with medicine or any other substance;
- (c) compelled to hold himself or herself in a constrained or fatiguing position;
- (d) deprived of food or drink;
- (e) denied the right to read or write letters or to make or receive telephone calls;

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- (f) subjected to treatment of a kind that could reasonably be expected to be detrimental to his or her physical, psychological or emotional well-being;
 - (g) subjected to treatment of a kind that is cruel, inhuman or degrading;
 - (h) segregated in contravention of section 19; or
 - (i) subjected to treatment of a kind forbidden by the regulations.
- (2) A detainee shall not, without reasonable excuse, be handcuffed or forcibly restrained.
- (3) A person who treats a detainee, or causes a detainee to be treated, in a manner prohibited by subsection (1) or (2) is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

DIVISION 3—*Miscellaneous***Persons on remand may be granted leave, etc.**

23. (1) The Director-General may, by order in writing, grant a person on remand leave to be absent from a detention centre for the purpose of—

- (a) attending a funeral;
- (b) visiting a close friend or relative who is suffering from serious sickness or disability;
- (c) applying for employment or being interviewed in relation to an application for employment;
- (d) engaging in employment of a kind specified in the order;
- (e) applying for enrolment in a course of education or vocational training or being interviewed in relation to an application for enrolment in such a course; or
- (f) attending a course of education or vocational training at a place specified in the order,

or for any other purpose that the Director-General thinks proper.

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

(3) Such a condition shall remain in force—

- (a) until the person to whom the order relates ceases to be a person on remand; or

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(b) for such shorter period as the Director-General may specify in the order.

(4) If, at the end of 7 days after a leave of absence granted under subsection (1) has expired, a person on remand has failed to return to the detention centre from which the person is absent, the person shall be deemed to have absconded from lawful custody.

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

24. (1) The Director-General may, by order in writing—

(a) grant a person subject to control leave to be absent from a detention centre;

(b) remove a person subject to control from a detention centre and place the person in the care of such person as may be specified in the order; or

(c) discharge a person subject to control from detention.

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

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

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

(5) Such a condition shall remain in force—

(a) until the person to whom the order relates ceases to be a person subject to control; or

(b) for such shorter period as the Director-General may specify in the order.

(6) If, at the end of 7 days after a leave of absence granted under subsection (1) (a) has expired, a person subject to control has failed to return to the detention centre from which the person is absent, the person shall be deemed to have absconded from lawful custody.

Removal to hospital of detainees

25. (1) A detainee may—

(a) by order of the Director-General; or

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- (b) in cases of emergency—by order of the superintendent of the detention centre,

be removed from the detention centre to a hospital, or to some other place specified in the order, for medical treatment.

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

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

(4) When—

(a) the medical superintendent or other person in charge of a hospital certifies that a detainee who has been removed to the hospital may be discharged from the hospital;

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

(c) an order under this section with respect to a detainee is revoked, the detainee shall forthwith return or, if an officer has taken charge of the detainee, be returned to the detention centre from which the detainee was removed.

(5) If a detainee fails to return to a detention centre pursuant to the requirements of subsection (4), the detainee shall be deemed to have absconded from lawful custody.

Release on licence under the Prisons Act 1952

26. The provisions of section 41 (5), (6) and (7) of the Prisons Act 1952 apply to and in respect of a classified person (other than a person on remand) in the same way as they apply to and in respect of a prisoner within the meaning of that Act.

Release on licence under the Crimes Act 1900

27. The provisions of section 463 of the Crimes Act 1900 apply to and in respect of a classified person (other than a person on remand) in the same way as they apply to and in respect of an offender undergoing a sentence, as referred to in that section.

Transfer of classified persons to prison**28. (1) If—**

- (a) a classified person is being detained in a detention centre; and
- (b) the Minister is satisfied that the person—
 - (i) is not profiting from the discipline and instruction in the detention centre; or
 - (ii) is not, for any other reason, a suitable person for detention in a detention centre,

the Minister may, by order in writing made with the consent of the Minister administering the Prisons Act 1952, direct the transfer of the person from the detention centre to a prison, there to be detained according to law.

(2) When a person is transferred from a detention centre to a prison, the person ceases to be a person on remand or a person subject to control, as the case may be, within the meaning of this Act and becomes a prisoner within the meaning of the Prisons Act 1952.

Remission

29. (1) A person subject to control shall, except in so far as a Judge otherwise orders under section 460A of the Crimes Act 1900, be granted remission as prescribed by the regulations.

(2) The determination of any remission shall be made by the Director-General and shall be final and without appeal.

(3) The granting of remission operates to reduce, by the period of the remission granted, the period for which a person is required, under the detention order by virtue of which the person is a person subject to control, to be detained in a detention centre.

Discharge generally

30. (1) A person subject to control shall be discharged from detention at the end of the period for which the person is required, under the detention order by virtue of which the person is a person subject to control, to be detained in a detention centre.

(2) Subsection (1) does not authorise or require a person subject to control to be discharged from detention while any other detention order is in force in respect of the person or while the person is a person on remand.

Early discharge

31. (1) A person subject to control may be discharged from detention at any time during the period of 24 hours immediately preceding the time when the person's detention as a person subject to control would otherwise terminate.

(2) A person subject to control whose detention would, but for this subsection, terminate on a Saturday, Sunday or public holiday may be discharged from detention on the last day that is not a Saturday, Sunday or public holiday.

Termination of detention orders

32. A detention order ceases to have effect—

- (a) in the case of a person who is discharged from detention pursuant to section 30 or 31—when the person is discharged;
 - (b) in the case of a person who is discharged from detention by virtue of an order under section 24 (1) (c)—
 - (i) except as provided by subparagraph (ii)—when the person is discharged; or
 - (ii) if the person is discharged subject to conditions and the order is not subsequently revoked under section 38—at the end of the period for which the person would otherwise be required, under the detention order, to be detained in a detention centre, taking into account any reduction or extension of that period under section 29 or 33;
 - (c) in the case of a person the subject of an order in force under section 19 of the Children (Criminal Proceedings) Act 1987 whereby a court has directed that part only of a term of imprisonment imposed on the person be served in a detention centre—when the person is transferred to a prison in accordance with the order to serve the remainder of the term of imprisonment in a prison; or
 - (d) in the case of a person who is transferred to a prison pursuant to section 28—when the person is so transferred.
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PART 4

OFFENCES RELATING TO ABSCONDING

Absconding

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

(2) If a person subject to control is ordered to be imprisoned for an offence under this section—

- (a) the imprisonment shall commence on the date of the order;
- (b) the person shall, on the expiration of the period of his or her imprisonment, be returned to the custody of the superintendent of the detention centre in which the person was detained immediately before the person was ordered to be imprisoned, there to be detained in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be; and
- (c) the period for which the person is required, under the detention order by virtue of which the person is a person subject to control, to be detained in a detention centre shall be extended by a period equivalent to the period for which the person was imprisoned.

(3) In subsection (2), a reference to imprisonment, in relation to a person who is found guilty of an offence under this section, includes, in the case of a person who is committed to the control of the Minister in respect of that offence, a reference to the detention of the person in a detention centre.

(4) A person who is deemed to have absconded from lawful custody by section 23 (4), 24 (6) or 25 (5) is not guilty of an offence under this section if the person has a reasonable excuse for having failed to return to the detention centre from which the person was absent.

Aiding abscondings

34. A person who—

- (a) aids a detainee in absconding or attempting to abscond from lawful custody; or
- (b) conveys any thing or causes any thing to be conveyed into a detention centre or to a detainee with intent to facilitate the absconding of any detainee,

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is guilty of an offence and liable—

- (c) in the case of a child—to a penalty not exceeding \$250 or imprisonment for a period not exceeding 3 months, or both; or
- (d) in the case of any other person—to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

Rescuing persons from lawful custody

35. A person who, by force, rescues or attempts to rescue a detainee from lawful custody is guilty of an offence and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

Permitting to abscond

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

Harbouring absconders

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

- (a) upon being convicted summarily—to a penalty not exceeding \$1,000; or
- (b) upon being convicted on indictment—to imprisonment for a period not exceeding 3 years.

PART 5
MISCELLANEOUS

Arrest of absconders, etc.

38. (1) An officer or member of the police force may, without any authority other than that conferred by this subsection, arrest a detainee who has absconded from lawful custody.

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(2) If the Director-General is of the opinion that a person who is absent from a detention centre pursuant to an order under section 23 or 24 has failed to comply with any condition to which the order is subject, the Director-General may revoke the order and make an order for the arrest of the person.

(3) If an officer or member of the police force informs an authorised justice, on oath, that a person is absent from a detention centre otherwise than in accordance with this Act, the authorised justice may issue a warrant for the arrest of the person.

(4) An officer or member of the police force may, pursuant to an order or warrant made or issued under subsection (2) or (3), arrest the person to whom the order or warrant relates.

(5) Upon the arrest of a person under subsection (1) or (4), the person shall be conveyed to, and delivered into the custody of, the superintendent of a detention centre, to be detained in a detention centre in accordance with this Act until the person ceases to be a person on remand or a person subject to control, as the case may be.

(6) Nothing in this section prevents proceedings from being taken against a person in respect of an offence under Part 4.

Expediting trials and appeals

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

(2) Such a return shall be made—

- (a) to the extent to which it relates to persons detained for trial in or appeal to the Supreme Court—to the Chief Justice of the Supreme Court;
- (b) to the extent to which it relates to persons detained for trial in or appeal to the District Court—to the Chief Judge of the District Court; and
- (c) to the extent to which it relates to persons detained for trial in the Children's Court—to the senior member of the Children's Court.

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

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

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- (b) to the Chief Judge of the District Court—any Judge of that Court; or
- (c) to the senior member of the Children's Court—any member of the Children's Court or any authorised Magistrate,

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

Evidentiary matters

40. (1) A document that purports to be—

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

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

(2) In the absence of evidence to the contrary, the authority of the Minister, Director-General or an officer to exercise any function conferred or imposed on the Minister, Director-General or officer by or under this Act shall be presumed.

Proceedings for offences

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

Attendance of persons subject to control before courts, etc.

42. (1) If a court of record, a judge of such a court, a person constituting such a court or a coroner is satisfied that it is desirable that a detainee should be in attendance before it or him or her for the purposes of any legal proceedings, inquest or inquiry then pending, the court, judge, person or coroner, as the case may be, may make an order directing the superintendent of the detention centre in which the detainee is detained to cause the detainee to be produced in court or at the place of the inquest or inquiry.

(2) An order in force under this section is sufficient authority for the superintendent of the detention centre in which the detainee is detained to cause the detainee to be produced in accordance with the terms of the order.

(3) A detainee produced in accordance with an order in force under this section shall, while in the actual custody of the superintendent of a detention centre, an officer or a member of the police force, be deemed to be in lawful custody and the superintendent, officer or member of the police force shall, as soon as the court, judge, person or coroner by which or by whom the order was made so permits, return the detainee to the detention centre from which the person was produced.

Royal prerogative of mercy preserved

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

Saving as to functions of Sheriff

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

Regulations

45. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the control, management, good government, supervision and inspection of detention centres;
- (b) the maintenance of the physical, psychological and emotional well-being of detainees;
- (c) the promotion of the social, cultural and educational development of detainees; and
- (d) the conduct and functions of persons employed in or about detention centres.

(2) A provision of a regulation may—

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

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or may do any combination of those things.

(3) A regulation may create an offence punishable (except in the case of misbehaviour) by a penalty not exceeding \$500.

