

FIRST PRINT

CHILDREN (DETENTION CENTRES) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Children (Detention Centres) Act 1987:

- (a) to enable a child who is on remand or who is the subject of a detention order to be detained in a police station (or, in some cases, in a court holding facility or other place approved by the Director-General of the Department of Family and Community Services) in certain specified circumstances (for example, during the hearing or adjournment of proceedings if the court so directs); and
- (b) to enable a court to make a general remand order in criminal proceedings against a child of or above the age of 16 years if it is satisfied that the child is not suitable for detention in a detention centre; and
- (c) to provide that the effect of such an order is to enable a court to remand the child to prison pending the commencement of the proceedings or during any adjournment without having to determine afresh whether or not the child is suitable for detention in a detention centre (a general remand order does not itself operate to remand a child to any custody); and
- (d) to require the Minister administering the Prisons Act 1952 to review such orders at least once a month; and
- (e) to allow a child who is subject to such an order to apply to the Children's Court for a variation or revocation of the order; and
- (f) to enable the Children's Court to vary or revoke such an order or an order under section 28B of the Act committing a child to prison only if satisfied that the matters which it took into account when making the order have significantly changed or that other special reasons exist for doing so; and
- (g) to provide that in proceedings to hear an application for the making, variation or revocation of a general remand order a court is not bound by the rules of evidence and that matters heard in such proceedings are not

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admissible as evidence in the criminal proceedings concerned unless such matters would be admissible anyway; and

(h) in other consequential respects.

The Bill also contains savings, transitional and other provisions.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision which gives effect to the Schedule of amendments.

Clause 4 contains savings, transitional and other provisions which provide that:

- * an existing warrant in respect of a child fine defaulter is to be taken to be an order committing the child to the control of the Minister; and
- * the detention of a person in a police station or other place that would have been valid if the amendments referred to in paragraph (a) above had been in force are validated; and
- * remand orders made before the commencement of the amendments to section 28A of the Act are to have effect as general remand orders and that the remand of a child to prison before that commencement is to be taken to have been done pursuant to such an order.

Schedule 1 achieves the object set out above.

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TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Children (Detention Centres) Act 1987 No. 57
4. Savings, transitional and other provisions

SCHEDULE 1 - AMENDMENTS

CHILDREN (DETENTION CENTRES) AMENDMENT BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Children (Detention Centres) Act 1987 with respect to the detention of children in places other than detention centres; and for other purposes.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Children (Detention Centres) Amendment Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Children (Detention Centres) Act 1987 No. 57

3. The Children (Detention Centres) Act 1987 is amended as set out in Schedule 1.

Savings, transitional and other provisions

4. (1) In this section:

"existing warrant" means:

- (a) an order made under the Child Welfare Act 1939 committing a person to an institution within the meaning of that Act; or
- (b) a warrant of commitment that has been issued in default of payment of a fine, penalty, costs or other amount of money adjudged, in proceedings before a court exercising jurisdiction under the Child Welfare Act 1939, to be payable,

but that has not been executed.

(2) An existing warrant is to be taken to be an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987.

(3) The term of imprisonment or detention to be served by a person under an existing warrant is to be taken to commence when the person is apprehended under the warrant.

(4) In an existing warrant:

- (a) a reference (however expressed) to an institution or a shelter, or an institution or a shelter of a particular kind, is to be read as a reference to a detention centre; and
- (b) a reference (however expressed) to the superintendent of an institution or the keeper or other person in charge of a shelter

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is to be read as a reference to the superintendent of a detention centre.

(5) The detention of a person at a police station or other place before the commencement of Schedule 1 (1) that would have been validly done under section 9 (3) of the Children (Detention Centres) Act 1987 if the amendments made by Schedule 1 (1) had been in force is validated.

(6) If a court has remanded a child to prison under section 28A of the Children (Detention Centres) Act 1987 before the commencement of Schedule 1 (2) (a):

- (a) the remand is to be taken to be a general remand order under that section as amended by this Act; and
- (b) the consent given to the operation of the remand under section 28F of that Act is to be taken to be consent to the operation of such an order; and
- (c) the remand (whether or not the remand was valid) of the child to prison by a court before that commencement is to be taken to have been done pursuant to such an order.

(7) Nothing in subsection (6) validates the remand of a child to prison if proceedings in respect of the validity of the remand were instituted before the day on which notice of motion for leave to bring in the Bill for this Act was given in the House of Parliament in which the Bill originated.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) **Section 9 (Persons on remand and persons subject to control to be detained in detention centres):**

Omit section 9 (3) and (4), insert instead:

(3) Despite subsection (1):

- (a) a person on remand may be detained in a police station:

SCHEDULE 1 - AMENDMENTS - *continued*

- (i) during the period between being charged with an offence and first appearing before a court in or in connection with proceedings for the offence; and
 - (ii) during the period between the making of an application for a general remand order under section 28A and the determination of the application by the court; and
 - (iii) during the period between the making of a general remand order under section 28A and the giving of consent to its operation under section 28F; and
 - (iv) during the period immediately before or after the person is required to appear before a court in or in connection with proceedings for an offence; and
 - (v) for any period during the hearing of proceedings for an offence, or during any adjournment of the hearing, if the court hearing the proceedings so directs; and
- (b) a person to whom section 28B applies may be detained in a police station:
- (i) during the period between the making of an application for an order under section 28B and the determination of the application by the Children's Court; and
 - (ii) during the period between the making of an order under section 28B and the giving of consent to its operation under section 28F; and
- (c) a person subject to control may be detained, in such place as the Director-General approves, for not more than 72 hours after becoming a person subject to control or, if the person is not already in custody at that time, for not more than 72 hours after the person is apprehended; and
- (d) a person on remand may be detained in a court holding facility during the period immediately

SCHEDULE 1 - AMENDMENTS - *continued*

before or after the person is required to appear before a court in or in connection with proceedings for an offence,

but only if it is impracticable for the person to be detained in a detention centre or, in the case of a person who would otherwise be detained in a prison, in a prison during that period.

(4) A child who is detained in a police station or other place under subsection (3) is, so far as is reasonably practicable:

- (a) to be detained separately from any adults detained there; and
- (b) to be provided with some means of usefully occupying himself or herself, except during normal sleeping hours; and
- (c) to be detained in a physical environment appropriate to the age, level of maturity and behaviour pattern of the child; and
- (d) to be able at all times to communicate readily with a person responsible for supervising the child's detention.

(4A) The regulations may make provision for or with respect to the detention of persons in police stations and other places under subsection (3) and, in particular, for or with respect to the responsibilities of the persons in charge of such police stations or other places and of the persons responsible for supervising any such persons detained there.

(2) **Section 28A (Certain children may be remanded in prison):**

(a) Omit section 28A (2) and (3), insert instead:

(2) In any criminal proceedings against a child to whom this section applies, a court may make a general remand order in relation to the child, but only if:

- (a) the person by whom the proceedings were commenced or the Director-General applies for such an order; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) the court is of the opinion that the child is not a suitable person for detention in a detention centre.
 - (3) The Children's Court may at any time on the application of the Director-General make a general remand order in relation to a child to whom this section applies, but only if the court is of the opinion that the child is not a suitable person for detention in a detention centre.
- (b) After section 28A (4), insert:
 - (5) A general remand order does not itself operate to remand the child to any custody.
 - (6) While a general remand order is in force, but subject to section 28F, the child may be remanded to a prison instead of a detention centre, unless the child is released on bail under the Bail Act 1978.
 - (7) When a general remand order ceases to be in force, a remand made pursuant to it is to be taken to be a remand to a detention centre.
- (3) Section 28D (**Review etc. of s. 28A and s. 28B orders**):
 - (a) From section 28D (1), omit "An", insert instead "A general remand order under section 28A or an".
 - (b) In section 28D (2), after "revocation of", insert "a general remand order under section 28A or".
 - (c) After section 28D (4), insert:
 - (5) The Children's Court may not vary or revoke such an order on application made by the person to whom the order relates unless it is satisfied that the matters which were taken into account in making the order have significantly changed or that other special reasons exist for varying or revoking the order.
- (4) Section 28E (**Consideration of suitability for detention centre**):
 - After section 28E (2), insert:
 - (3) In dealing with an application under section 28D for the variation or revocation of a general remand order, the

SCHEDULE 1 - AMENDMENTS - *continued*

Children's Court is not required to reconsider every matter that was taken into account in making the order, unless it appears to the Court that the matter has, or any associated matters have, significantly changed.

(5) Section 28F (**Consent of Minister administering Prisons Act 1952 required**):

(a) From section 28F (1), omit "The remand of a child to prison", insert instead "A general remand order".

(b) Omit section 28F (2), insert instead:

(2) Until such a general remand order operates but subject to section 9 (3), a remand made pursuant to it is to be taken to be a remand to a detention centre.

(3) Until such an order under section 28B operates but subject to section 9 (3), it is to be taken to remain a detention order.

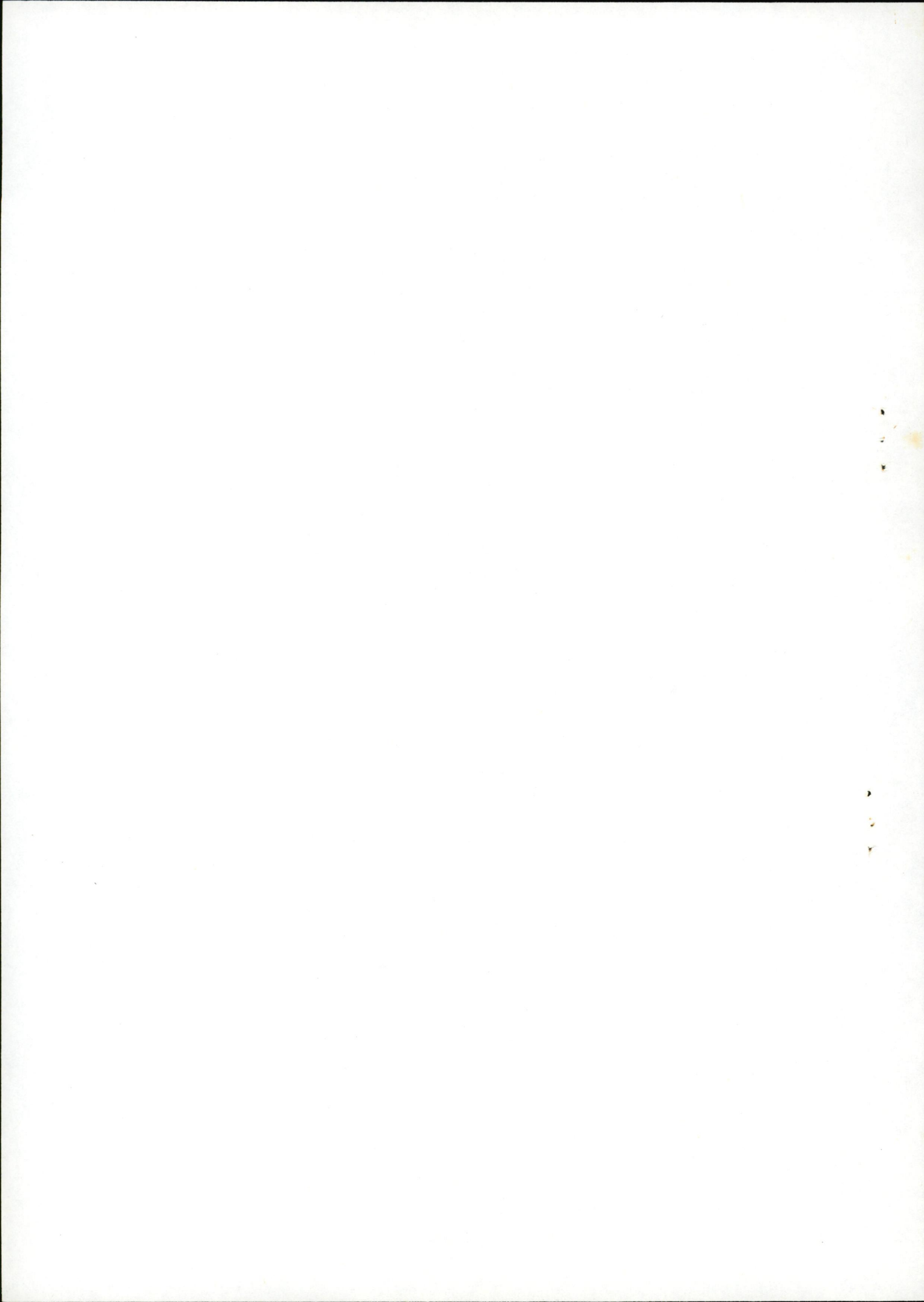
(6) Section 28G:

After section 28F, insert:

Provisions regarding making etc. of general remand orders

28G. (1) A court, in determining whether or not a general remand order under section 28A should be made, varied or revoked, is not bound by the rules of evidence and may inform itself on the matter in such a manner as it thinks fit.

(2) Any matter which is heard by a court for the purpose of determining whether or not to make, vary or revoke such an order is not admissible as evidence in the criminal proceedings concerned unless the matter would otherwise be admissible as evidence in those criminal proceedings.

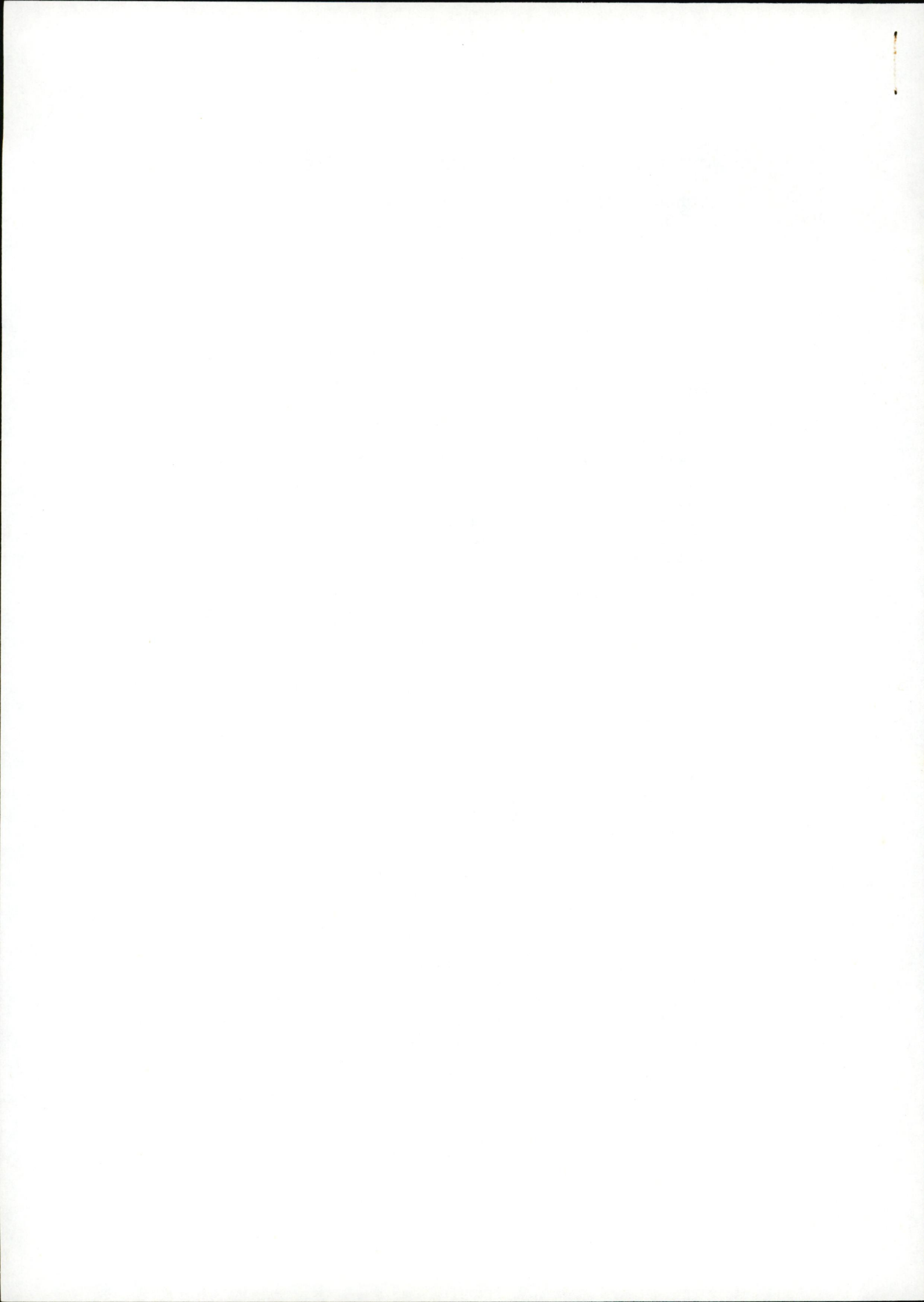


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Schedule of the amendments referred to in Message of
7 December 1989.


Clerk of the Parliaments

- No. 1. Page 3, clause 4 (5). Omit the subclause.
- No. 2. Page 3, clause 4 (6). Omit the subclause.
- No. 3. Page 3, clause 4 (7). Omit the subclause.
- No. 4. Page 3, Schedule 1 (1), proposed section 9 (3). After "Despite subsection (1)", insert "and only if it is impracticable for the person to be detained in a detention centre or, in the case of a person who would otherwise be detained in a prison, in a prison during that period".
- No. 5. Page 3, Schedule 1 (1), proposed section 9 (3) (a) After "station", insert "or in such other place as the Director-General approves".
- No. 6. Page 4, Schedule 1 (1), proposed section 9 (3) (a) (ii). After "court", insert ", if the court hearing the application so directs, but only for a period of not more than 24 hours before or after the person is required to appear before the court or, in the case of an appearance on a Friday to be followed by an appearance on Monday where there is no detention centre or prison, as the case requires, in reasonable proximity to the court, for an aggregate period of not more than 72 hours".
- No. 7. Page 4, Schedule 1 (1), proposed section 9 (3) (a) (iii). After "section 28F", insert ", if the court which made the order so directs, but only for a period of not more than 24 hours after the order is made".
- No. 8. Page 4, Schedule 1 (1), proposed section 9 (3) (a) (v). After "directs", insert ", but only for a period of not more than 24 hours before or after the person is required to appear before the court or, in the case of an appearance on a Friday to be followed by an appearance on Monday where there is no detention centre or prison, as the case requires, in reasonable proximity to the court, for an aggregate period of not more than 72 hours".
- No. 9. Page 4, Schedule 1 (1), proposed section 9 (3) (b). Omit the paragraph.



No. 10. Page 4, Schedule 1 (1), proposed section 9 (3) (c).
Omit the paragraph, insert instead:

(c) a person subject to control may be detained:

(i) in a police station for not more than 24 hours after becoming a person subject to control or, if the person is not already in custody at that time, for not more than 24 hours after the person is apprehended; or

(ii) in such other place as the Director-General approves, for not more than 72 hours after becoming a person subject to control or, if the person is not already in custody at that time, for not more than 72 hours after the person is apprehended; and

No. 11. Page 5, Schedule 1 (1), proposed section 9 (3) (d).
Omit ", but only if it is impracticable for the person to be detained in a detention centre or, in the case of a person who would otherwise be detained in a prison, in a prison during that period".

No. 12. Pages 5 and 6, Schedule 1 (2) (a), proposed section 28A (2) and (3). Omit the subsections, insert instead:

(2) An application may be made in relation to a child to whom this section applies for a general remand order:

(a) in any criminal proceedings, by the person by whom the proceedings were commenced; or

(b) at any time, by the Director-General.

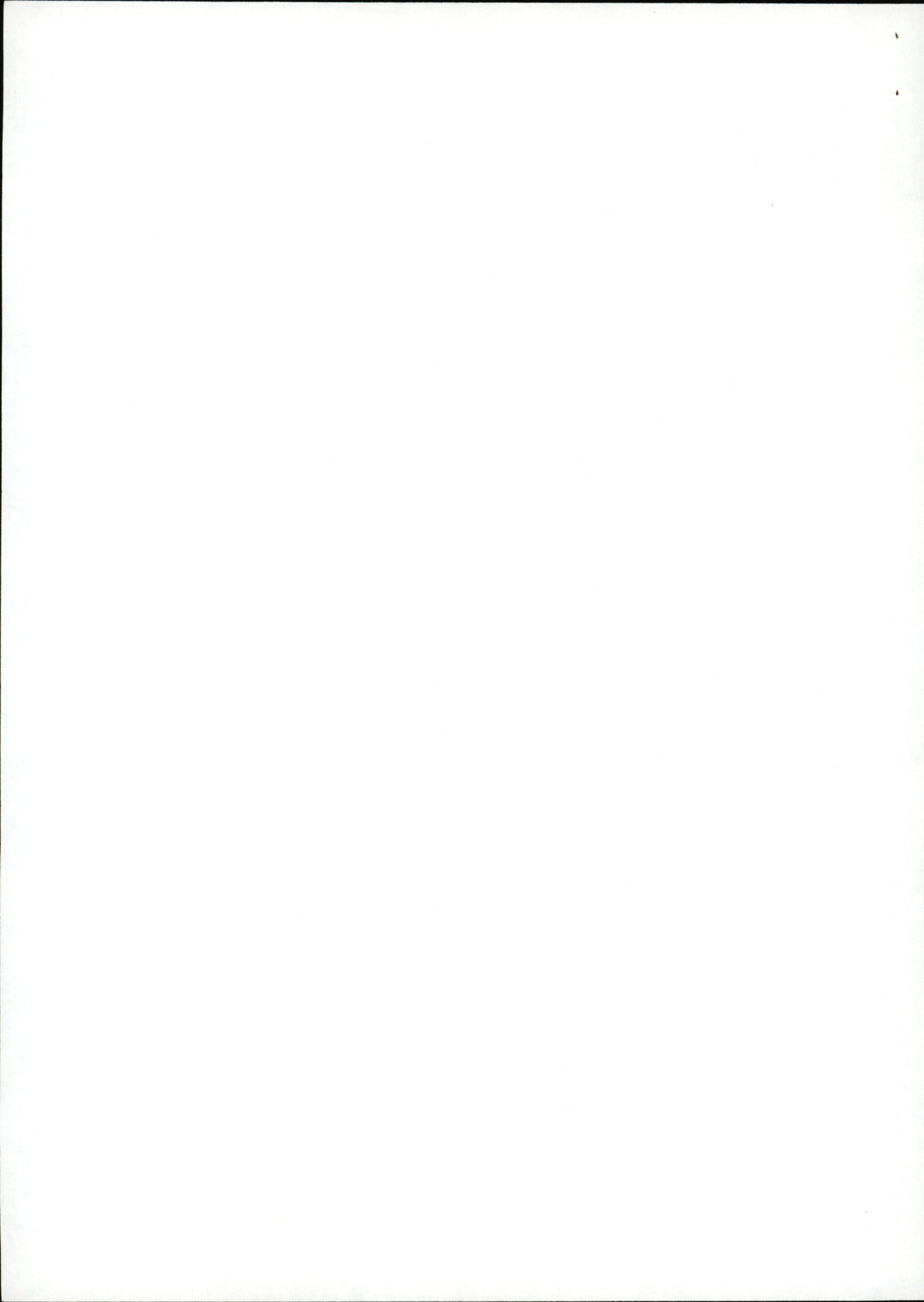
(3) Subject to section 28G, on an application under subsection (2) a court may make a general remand order in relation to the child, but only if:

(a) the court is satisfied that it is very highly probable that the child is not suitable for detention in a detention centre; and

(b) the court is satisfied that it is very highly probable that the child is suitable for detention in a prison.

No. 13. Page 6, Schedule 1 (2) (b). After proposed section 28A (7), insert:

(8) A general remand order in relation to a child, unless sooner revoked under section 28D, ceases to be in force:



- (a) at the expiration of a period specified by the court making the order or, if that period is varied under section 28D, at the expiration of the period as so varied; or
- (b) if no period is specified by the court making or varying the order, at the conclusion of the criminal proceedings concerned.

No. 14. Page 6, Schedule 1 (3) (a). Omit the item, insert instead:

(a) Omit section 28D (1), insert instead:

(1) A general remand order under section 28A or an order under section 28B must be reviewed at least once a month by the Minister administering the Prisons Act 1952, taking into account any representations made by or on behalf of, or about, the person to whom the order relates and any other relevant matters, to determine whether the person should be transferred to a detention centre.

No. 15. Page 6, Schedule 1 (3) (b). Before "a general remand order", insert "an order under section 28,".

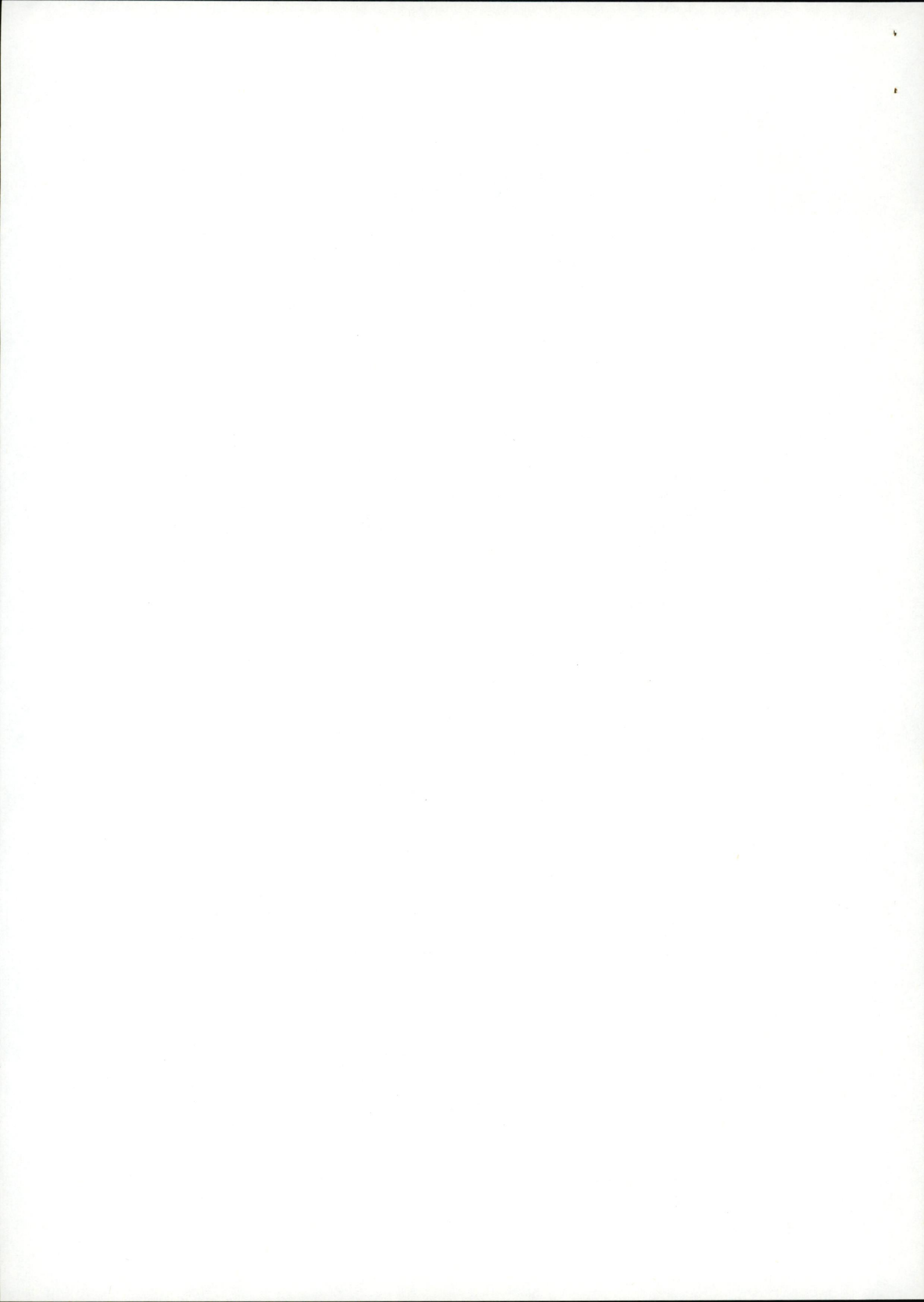
No. 16. Page 6, Schedule 1 (3) (c). Omit proposed section 28D (5), insert instead:

(5) The Children's Court may vary or revoke such an order on application made by the person to whom the order relates if it is satisfied that the matters which were taken into account in making the order have sufficiently changed, or that other reasons exist to warrant varying or revoking the order.

No. 17. Pages 6 and 7, Schedule 1 (4). Omit proposed section 28E (3), insert instead:

(3) In dealing with an application under section 28D for the variation or revocation of a general remand order, the Children's Court is not required to reconsider every matter that was taken into account in making the order, unless it appears to the Court that the matter has, or any associated matters have, sufficiently changed.

(4) If an application has been made to a court for a general remand order under section 28A or an order under section 28B in relation to a person and the court has refused the application, the court must not consider another such application unless it is satisfied that the matters which were taken into account in refusing the first application have sufficiently changed, or that other special reasons exist to warrant consideration of the application.



(5) This section does not prevent a court from having regard to the objects of this Act.

(6) For the purpose of subsection (1) (e), "accommodation" includes the conditions of, and the programs, treatment and other facilities available within, such accommodation.

No 18. Page 7, Schedule 1 (6). Omit proposed section 28G, insert instead:

Provisions regarding making of general remand orders etc.

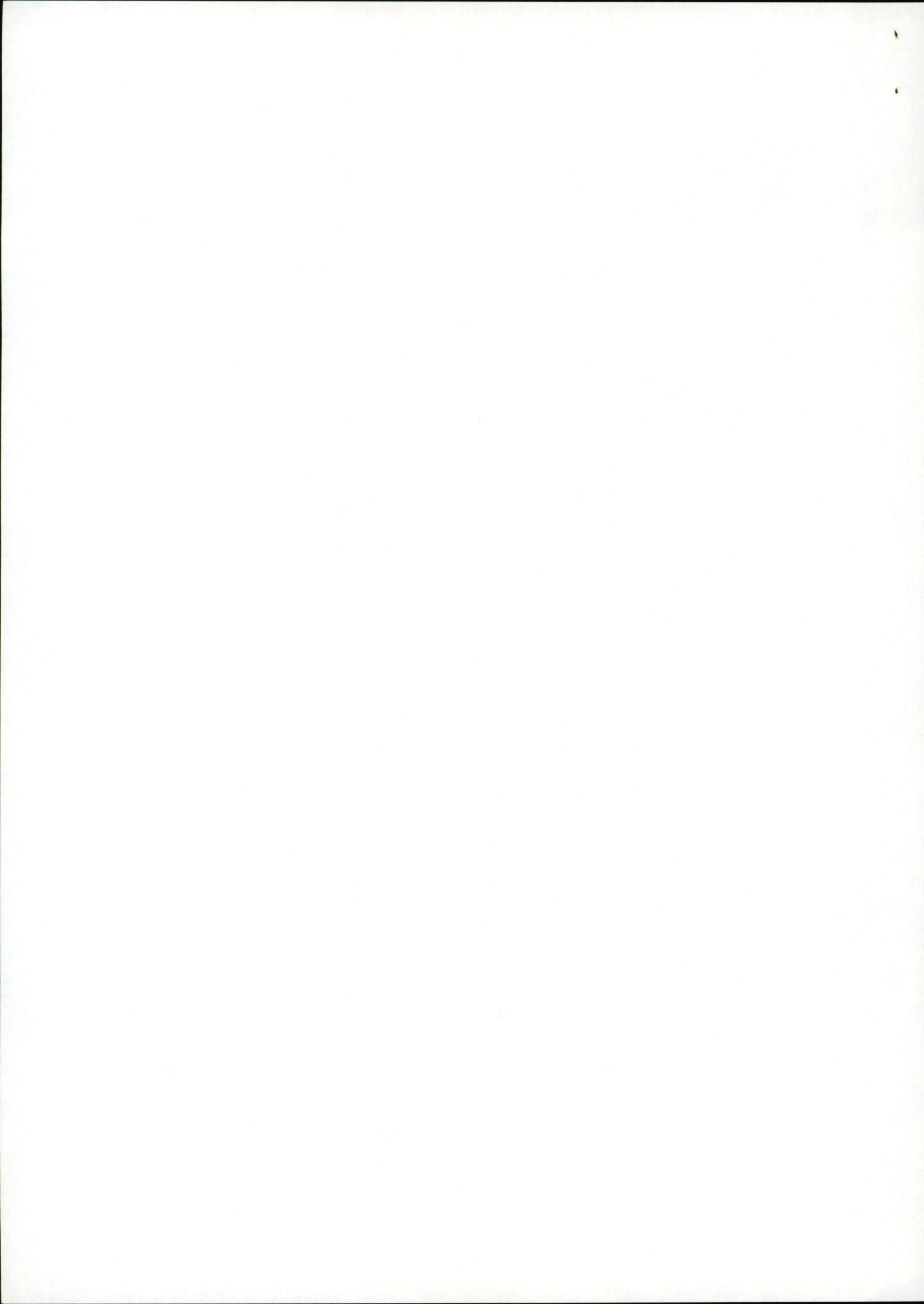
28G. (1) An application cannot be made for a general remand order under section 28A or an order under section 28B except with the consent of the Minister.

(2) The Minister may not consent to such an application unless the Minister has received and considered a written report made by, or on behalf of, the Director-General as to the circumstances of the application and in particular detailing:

- (a) the history of the person to whom the application relates; and
- (b) the needs of the person; and
- (c) any relevant problems and factors; and
- (d) management strategies which have been attempted to address those needs and to resolve those problems; and
- (e) other placement, program or treatment arrangements for the person that have been tried or considered and found unsatisfactory, and the reasons why they were found unsatisfactory; and
- (f) any other matters relating to the person's physical, emotional and social development and health.

(3) A copy of the report is to be provided as soon as practicable to a barrister, solicitor or agent representing the person to whom the report relates.

(4) In proceedings on an application for a general remand order under section 28A or an order under 28B, the court hearing the proceedings:



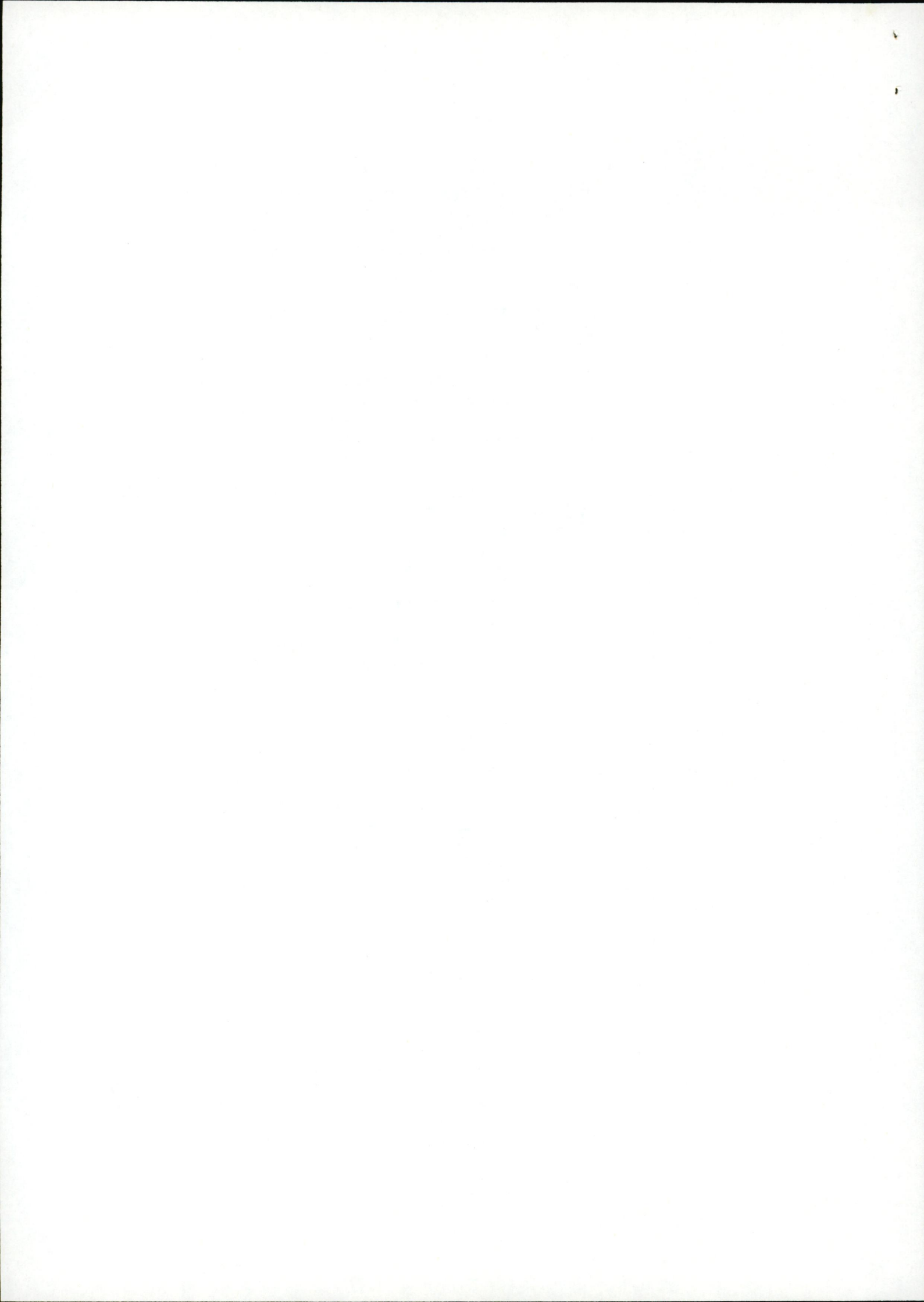
- (a) must consider a report prepared by or on behalf of the Director-General in accordance with subsection (2) and tendered by the person making the application; and
- (b) may order a report as to any matter that the court thinks fit and may adjourn the proceedings to enable the report to be prepared; and
- (c) may consider such other evidence as it thinks appropriate in the circumstances of the case.

(5) A person making an application under section 28A or 28B must call evidence or tender a written report from a person who has personal knowledge of the circumstances in which the person to whom the application relates would be accommodated in prison if the order was made.

(6) A court, when making, varying or revoking an order or refusing an application under section 28A, 28B or 28D may make recommendations, taking into account the wishes of the person to whom the order or application relates, as to the appropriate accommodation, programs and treatment that should be made available for the person.

(7) In any proceedings before a court on an application for the making, variation or revocation of an order under section 28A, 28B or 28D, the person to whom the application relates is entitled:

- (a) to appear in the proceedings and to be heard and make submissions; and
- (b) to be represented by a barrister or solicitor, or with the leave of the court, by an agent; and
- (c) to call evidence; and
- (d) to tender reports or other material; and
- (e) to cross-examine the author of any report tendered in support of the application; and
- (f) without subjecting himself or herself to cross-examination, to make a written or an oral statement in relation to any evidence called or any report or other material tendered in relation to the application.



(8) Any matter which is heard by a court for the purpose of determining whether or not to make, vary or revoke such an order is not admissible as evidence in the criminal proceedings concerned unless the matter would otherwise be admissible as evidence in those criminal proceedings.

Person to be informed of a decision to seek a transfer to prison

28H. A person in relation to whom it is proposed to make an order under section 28, or an application for the making, variation or revocation of an order under section 28A, 28B or 28D (2) (b) must be informed immediately by the superintendent of the detention centre in which the person is detained of:

- (a) the decision to seek such an order or make such an application; and
- (b) the person's rights:
 - (i) to oppose the order or application; and
 - (ii) to inform a friend or relative; and
 - (iii) to obtain advice from a solicitor or barrister; and
 - (iv) if a general remand order is made under section 28A or an order is made under section 28B, to seek a variation or revocation of the order under section 28D; and
 - (v) to be represented at any proceedings, and must be given reasonable opportunities to exercise those rights.

Recording of reasons for transfer orders

28I. (1) The Minister or the court, as the case may be, must record the reasons for making, varying or revoking an order under section 28, 28A, 28B or 28D or for rejecting an application under section 28D.

(2) A copy of the record of those reasons is to be provided to the person who is the subject of the order as soon as practicable.

Examined



Chairman of Committees

