



New South Wales

# Children (Detention Centres) Amendment Act 2008 No 55

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Children (Detention Centres) Act 1987 No 57	2
4 Repeal of Act	2
Schedule 1 Amendments	3

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New South Wales

# **Children (Detention Centres) Amendment Act 2008 No 55**

Act No 55, 2008

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An Act to amend the *Children (Detention Centres) Act 1987* in relation to the detention and transfer of juvenile offenders; and for other purposes. [Assented to 1 July 2008]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Children (Detention Centres) Amendment Act 2008*.

**2 Commencement**

This Act commences on the date of assent to this Act.

**3 Amendment of Children (Detention Centres) Act 1987 No 57**

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

**4 Repeal of Act**

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1 Amendments

(Section 3)

**[1] Section 3 Definitions**

Insert after section 3 (4):

- (5) Notes included in this Act do not form part of this Act.

**[2] Section 7 Inspection of detention centres by juvenile justice officer appointed by Director-General**

Omit “3 months” from section 7 (1). Insert instead “12 months”.

**[3] Section 9A**

Insert after section 9:

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

- (1) A person who is of or above the age of 21 years is not to be detained in a detention centre if he or she is the subject of an arrest warrant of any kind.
- (2) A person who is of or above the age of 18 years, but under the age of 21 years, is not to be detained in a detention centre if he or she is the subject of an arrest warrant of any of the following kinds:
  - (a) a warrant issued under section 41 of the *Children (Criminal Proceedings) Act 1987* in relation to an alleged breach of a good behaviour bond or an alleged breach of probation, or
  - (b) a warrant issued under section 23 of the *Children (Community Service Orders) Act 1987* in relation to an alleged breach of a children’s community service order, or
  - (c) a warrant issued under section 98 of the *Crimes (Sentencing Procedure) Act 1999* in relation to an alleged breach of a condition of a good behaviour bond, or
  - (d) his or her arrest under section 39 of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged escape from custody, or
  - (e) a warrant issued under section 116 of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged breach of a community service order.

**Note.** Pursuant to Part 13 of the *Crimes (Administration of Sentences) Act 1999*, persons referred to in section 9A may be detained in a correctional centre.

**[4] Section 16 Separation of detainees**

Insert after section 16 (2):

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

**[5] Section 19 Segregation of detainees for protection**

Insert after section 19 (4):

- (5) Nothing in this section limits the circumstances in which detainees may be detained separately pursuant to section 16.

**[6] Section 21 Punishments for misbehaviour**

Omit “for a period not exceeding 4 days” from section 21 (1) (b).

**[7] Section 21 (1A)**

Insert after section 21 (1):

- (1A) A detainee may not be restricted from participation in sport or leisure activities for more than 7 days at a time except with the prior approval of the Director-General, whether given generally or in relation to a particular detainee.

**[8] Section 28 Transfer of older detainees from detention centres to correctional centres**

Omit section 28 (1A). Insert instead:

- (1A) An order may be made under subsection (1) regardless of whether or where the detainee is currently in custody.

**[9] Section 28 (2A)**

Omit the subsection. Insert instead:

- (2A) In the case of a detainee who is of or above the age of 18 years, but under the age of 21 years, an order may not be made under subsection (1) unless:

- (a) the Children's Court makes an order authorising the making of such an order, or
- (b) the detainee has been detained in a detention centre for at least 6 months and the Director-General has assessed that, having regard to all of the circumstances, it would be preferable for the detainee to be detained in a correctional centre, or
- (c) the detainee is, or has previously been, detained as an inmate in a correctional centre (other than a juvenile correctional centre) for a period of, or periods totalling, more than 4 weeks, or
- (d) the detainee applies to the Director-General in writing for the detainee's transfer to a correctional centre, or
- (e) one or more of the circumstances referred to in subsection (2) applies in relation to the detainee.

**[10] Section 28 (2C) and (2D)**

Insert after section 28 (2B):

- (2C) Subsection (2) does not apply to a detainee in respect of whom an order under subsection (1) has previously been made in relation to a current period of detention.
- (2D) Subsection (2A) does not apply to a detainee in respect of whom an order under subsection (1) has previously been made, whether in relation to a current period of detention or an earlier period of detention.

**[11] Section 28 (3) (b)**

Omit "a convicted inmate". Insert instead "an inmate".

**[12] Section 32A Regulations**

Insert after section 32A (q):

- (q1) the circumstances in which detainees may be confined to their rooms, and the periods for which they may be so confined,
- (q2) the review of directions given by the Director-General under section 16 (3),

[Agreement in principle speech made in Legislative Assembly on 6 June 2008  
Second reading speech made in Legislative Council on 24 June 2008]

BY AUTHORITY