

No. 48 of 1976

REMAND CENTRES ORDINANCE 1976

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No. 48 of 1976

AN ORDINANCE

To Establish Remand Centres in the Australian Capital Territory.

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this twenty-second day of September, 1976.

JOHN R. KERR
Governor-General.

By His Excellency's Command,

A. A. STALEY
Minister of State for the Capital Territory.

REMAND CENTRES ORDINANCE

PART I—PRELIMINARY

1. This Ordinance may be cited as the *Remand Centres Ordinance* Citation. 1976.*
2. This Ordinance shall come into operation on such a date as is fixed by the Minister by notification published in the *Gazette*. Commencement.
3. In this Ordinance, unless the contrary intention appears— Definitions.
 - “ Administrator ” means the Administrator appointed under this Ordinance;
 - “ Chief Magistrate ” has the same meaning as in the *Court of Petty Sessions Ordinance 1930*;
 - “ convicted person ” means a person convicted by a court, whether within or outside the Territory, and sentenced to a period of imprisonment, whether with or without any other punishment;
 - “ custodial officer ” means a custodial officer appointed under this Ordinance;
 - “ detainee ” means a person detained in a remand centre;
 - “ Judge ” has the same meaning as in the *Australian Capital Territory Supreme Court Act 1933*;
 - “ juvenile ” means a person under the age of 18 years;

* Notified in the *Australian Government Gazette* on 24 September 1976.

- “magistrate” has the same meaning as in the *Court of Petty Sessions Ordinance 1930*;
- “medical officer” means a medical officer appointed under this Ordinance;
- “New South Wales institution” means an institution in New South Wales where convicted persons are detained;
- “registered medical practitioner” has the same meaning as in the *Medical Practitioners Registration Ordinance 1930*;
- “remand centre” means an area declared by the Minister to be a remand centre or a temporary remand centre;
- “shelter” has the same meaning as in the *Child Welfare Ordinance 1957*;
- “standing orders” means the orders and instructions issued by the Administrator under section 8;
- “Superintendent”, in relation to a remand centre, means the person appointed under section 6 as Superintendent of the remand centre;
- “temporary remand centre” means an area declared by the Minister under section 5 to be a temporary remand centre;
- “visiting magistrate” means—
- (a) the Chief Magistrate; or
 - (b) a magistrate appointed by the Chief Magistrate to be the visiting magistrate for the purposes of this Ordinance.

PART II—ESTABLISHMENT OF REMAND CENTRES

Declaration
of remand
centre.

4. The Minister may, by instrument in writing published in the *Gazette*, declare an area of land to be a remand centre.

Temporary
remand
centres.

5. (1) Where—

- (a) the number of detainees in a remand centre is, or is likely to be, greater than the number that can be held conveniently in the centre; and
- (b) it is not convenient to transfer some detainees to another institution, within or outside the Territory,

the Administrator shall inform the Minister of the fact.

(2) Where—

- (a) there is an outbreak of disease or violent disorder in a remand centre; and
- (b) it is, in the opinion of the Superintendent, necessary to transfer some or all detainees from the centre,

the Administrator shall inform the Minister of the fact.

(3) Where the Minister has been informed by the Administrator under sub-section (1) or (2), the Minister may, by instrument in writing published in the *Gazette*, declare an area of land to be a temporary remand centre.

(4) A declaration under sub-section (3) shall specify the period, being a period not exceeding 1 month, for which the area is to remain a temporary remand centre.

(5) At or before the expiration of the period specified in a declaration under sub-section (3) or this sub-section, the Minister may, if he considers it necessary, by instrument in writing published in the *Gazette*, extend, by a period not exceeding 1 month, the period for which the area is to be a temporary remand centre.

PART III—STAFF

6. (1) For the purposes of this Ordinance, the Minister may, by instrument in writing, appoint an Administrator. Minister may appoint Administrator, &c.

(2) For the purposes of this Ordinance, the Minister may, by instrument in writing, appoint—

- (a) a Superintendent;
- (b) such custodial officers as he considers necessary;
- (c) a medical officer; and
- (d) such other staff as he considers necessary,

in respect of each remand centre.

7. Subject to this Ordinance, the Administrator is responsible for the conduct of all remand centres in the Territory. Powers and duties of Administrator.

8. (1) The Administrator may, from time to time, in writing, issue such orders and instructions as are necessary for the day-to-day running of remand centres. Standing orders.

(2) The Administrator shall—

- (a) cause orders and instructions issued under sub-section (1), other than those dealing with the security of a remand centre, to be available for inspection by members of the public; and
- (b) cause all orders and instructions issued under sub-section (1) to be available for inspection by the visiting magistrate.

9. Subject to this Ordinance, the regulations and standing orders, the Superintendent— Powers and duties of Superintendent.

- (a) is responsible for the day-to-day running of the remand centre in respect of which he is appointed;
- (b) has control of, and is responsible for, all detainees in the remand centre; and
- (c) has such duties as are prescribed.

10. (1) The Superintendent may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a custodial officer any of his powers under this Ordinance, other than this power of delegation. Delegation by Superintendent.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Superintendent.

(3) A delegation under this section does not prevent the exercise of a power by the Superintendent.

Absence of Superintendent.

11. (1) Where the Superintendent of a remand centre is not on duty at the remand centre and—

- (a) no delegation under section 10 is in force; or
 - (b) the custodial officer in respect of whom a delegation under section 10 is in force is not on duty at the remand centre,
- the powers, duties and functions of the Superintendent shall be exercised and performed by the most senior of the custodial officers on duty at the time.

(2) In sub-section (1), “most senior”, in relation to a custodial officer, means the person who, at that time, has occupied an office under the *Public Service Act 1922* of Chief Custodial Officer for the greatest length of time.

Duties of custodial officer.

12. A custodial officer shall obey such directions as are given by the Superintendent and shall perform such duties as are prescribed.

Duties and powers of medical officers.

13. (1) A medical officer—

- (a) subject to the consent of a detainee, shall do such things as are necessary to safeguard the mental and physical health of the detainee;
- (b) for that purpose, may give such directions, as to diet or otherwise, as are necessary; and
- (c) shall perform such other medical duties as are prescribed.

(2) Notwithstanding paragraph (1)(a), where the medical officer is satisfied that it is necessary, in order to preserve the life of the detainee, to administer medical treatment to the detainee, the medical officer may administer the medical treatment to the detainee.

(3) For the purpose of performing his duties under this section, the medical officer shall, at least once in each week—

- (a) visit the remand centre in respect of which he is appointed;
- (b) as often as is, in his opinion, necessary—
 - (i) examine the detainees; and
 - (ii) examine all food, clothing and bedding at the centre; and
- (c) examine each detainee who requests medical treatment.

(4) Where as a result of an inspection carried out under sub-section (3), the medical officer is of the opinion that matters in connexion with conditions at the remand centre or treatment of the detainees at the remand centre require attention, the medical officer shall, by instrument in writing, report to the Administrator concerning the fact, stating the action that should, in his opinion, be taken.

(5) Where a medical officer has given a direction under paragraph (1)(b), the Administrator shall, unless it would be prejudicial to the security of the remand centre, cause the direction to be complied with.

(6) Where a medical officer has made a report under sub-section (4), the Administrator shall, unless it would be prejudicial to the security of the remand centre, cause such action to be taken as the report requires.

14. (1) Where a medical officer or a registered medical practitioner considers it necessary that a detainee be removed from a remand centre to receive medical treatment in a hospital or from a registered medical practitioner, he shall notify the Superintendent in writing of the fact and of the hospital to which, or registered medical practitioner to whom, the detainee should, in the opinion of the medical officer, be removed.

Removal of
detainee to
hospital.

(2) Subject to sub-section (3), the Superintendent shall comply with a notification of a medical officer or a registered medical practitioner given under sub-section (1).

(3) Where the Minister is of the opinion that it would be prejudicial to the security of the remand centre or of the detainee to comply with a notification of a medical officer or a registered medical practitioner given under sub-section (1), the Minister shall direct the Superintendent not to comply with the notification.

(4) Where the Minister gives a direction under sub-section (3), the Minister shall also direct the Superintendent to provide all possible medical treatment at the remand centre for the detainee.

(5) Where—

- (a) the Superintendent is of the opinion that a detainee is in need of immediate medical treatment in a hospital; and
- (b) no medical officer or registered medical practitioner is available to give a notification under sub-section (1),

the Superintendent shall cause the detainee to be removed to a hospital.

PART IV—DETAINEES

15. (1) The following persons may be detained in a remand centre—

Persons who
may be
detained.

- (a) a person remanded in custody by a court in the Territory;
- (b) a person committed under section 65, 84, 90A, 92A, 94 or 105 of the *Court of Petty Sessions Ordinance 1930*;
- (c) a person convicted by a court in the Territory and sentenced to a period of imprisonment, whether with or without any other punishment;
- (d) a person committed under section 150, 151, 181 or 202 of the *Court of Petty Sessions Ordinance 1930*;
- (e) a convicted person who is required to appear as a witness before a court in the Territory; and

(f) a juvenile who—

- (i) is required by an order of a court of the Territory to be kept in custody; and
- (ii) is, in the opinion of the Minister, not a suitable person to be detained in a shelter.

(2) A person referred to in paragraph (1)(c) or (1)(d) shall not be detained in a remand centre for any longer than is necessary while awaiting transport to another institution.

(3) A convicted person, other than a convicted person referred to in sub-section (1), shall not be detained in a remand centre.

(4) A person who is detained in a remand centre is, by virtue of this sub-section, in the custody of the Superintendent of the remand centre.

Transportation of detainees.

16. A person who may be detained in a remand centre shall, for the purposes of this Ordinance—

- (a) while he is being transported in the Territory to or from a remand centre; and
- (b) while he is receiving medical or dental treatment outside a remand centre,

be deemed to remain in lawful custody.

Offences by detainees.

17. A detainee shall not—

- (a) disobey a lawful order given by the Superintendent, a custodial officer or a medical officer;
- (b) commit any act contrary to the provisions of the standing orders concerning the good order, discipline and security of a remand centre;
- (c) escape; or
- (d) make, conceal or have in his possession without authority, a tool, weapon, knife, key or other implement or thing intended to effect, or capable of effecting, the escape of a detainee or capable of being used for an unlawful purpose.

Penalty: \$1,000 or imprisonment for 1 year.

Offences by persons other than detainees.

18. A person shall not—

- (a) rescue a detainee;
- (b) give assistance to a person who has escaped from a remand centre;
- (c) enter, or remain in, a remand centre without lawful excuse; or
- (d) unlawfully convey an article into or out of a remand centre or to or from a detainee.

Penalty: \$1,000 or imprisonment for 1 year.

Detainee to submit to medical examination.

19. A detainee shall—

- (a) when directed by the Superintendent, on admission to the remand centre; and

(b) when directed by a medical officer acting in pursuance of paragraph 13 (3)(b),
submit himself to a medical examination by a medical officer.

20. Subject to section 21, a detainee, other than a person referred to in paragraph 15 (1)(c), 15 (1)(d) or 15 (1)(e), has the following entitlements— Entitlements of detainees.

- (a) to send and receive mail;
- (b) the reasonable use of a telephone;
- (c) to receive food from outside the remand centre;
- (d) to wear his own clothing;
- (e) to receive visitors;
- (f) to receive treatment from his own registered medical practitioner and dentist;
- (g) to perform such work in the remand centre as is available from time to time;
- (h) to participate in recreational activities; and
- (j) to obtain reading materials from outside the remand centre.

21. (1) Where the Superintendent considers it necessary for the maintaining of security, discipline or order in a remand centre, or for the health of a detainee, he may cause a detainee to be confined to his sleeping quarters, or deprived of one or more of his entitlements, or both. Withdrawal of entitlements by Superintendent.

(2) In sub-section (1), a reference to entitlements, in relation to a detainee, is a reference to one or more of the entitlements specified in section 20.

(3) Notwithstanding the provisions of sub-section (1), a detainee is entitled to 2 hours recreation in the open air on each day.

22. The Superintendent may use or direct the use of such force as is necessary to maintain security and good order within a remand centre. Use of force.

23. A detainee may—

- (a) appeal to the Superintendent against the actions of a custodial officer; and
- (b) make a request to the Superintendent with respect to the conditions under which he is detained.

Request or appeal by detainee.

24. (1) The Chief Magistrate shall appoint a magistrate to be the visiting magistrate for the purposes of this Ordinance. Visiting magistrate.

(2) The visiting magistrate shall visit each remand centre at least once each week in order to inspect the centre and inquire into complaints from detainees.

(3) Where, after inspecting a remand centre, the visiting magistrate is not satisfied that the centre is being conducted in accordance with the provisions of this Ordinance, he shall report the matter to the Minister.

Complaints
by
detainees.

25. (1) Where a detainee is not satisfied with his treatment at the remand centre or the manner in which the remand centre is conducted—

- (a) the detainee; or
- (b) a person acting on behalf of, and at the request of, the detainee,

may make a complaint to the visiting magistrate.

(2) A complaint under sub-section (1) may, at the request of the detainee, be made in the absence of any person other than the complainant and the visiting magistrate.

(3) The visiting magistrate shall inquire into a complaint made under sub-section (1) and may—

- (a) make a recommendation concerning the complaint to the Administrator; and
- (b) make such report (if any) to the Minister concerning a complaint as he considers necessary.

Superinten-
dent, &c.,
to be notified
of complaint,
&c.

26. A custodial officer shall take all steps necessary to ensure that the Superintendent or the visiting magistrate, as the case requires, is informed as soon as practicable of a request or an appeal made under section 23 or a complaint under section 25, as the case requires.

Inspection
of remand
centre.

27. A Judge, magistrate or a member of the Legislative Assembly nominated by the Assembly may inspect a remand centre at any time.

Temporary
release of
detainees.

28. (1) The Minister may, subject to such conditions as he thinks fit, release a detainee temporarily from a remand centre—

- (a) to attend the funeral of a close relative;
- (b) to visit an ill relative;
- (c) to attend an educational examination; or
- (d) for such other purposes as the Minister considers necessary.

(2) A detainee released from a remand centre under sub-section (1)—

- (a) is, for the purpose of this Ordinance, deemed to remain in custody; and
- (b) is, if he fails to return to the remand centre at the expiration of the period of temporary release, deemed to have escaped.

PART V—MISCELLANEOUS

Regulations.

29. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance and, in particular, prescribing matters for or in relation to—

- (a) offences by custodial officers;
- (b) the admission and searching of detainees;
- (c) offences by detainees;

- (d) the health, welfare and living conditions of detainees, including—
- (i) diet;
 - (ii) clothing;
 - (iii) work, including payment for any work performed;
 - (iv) recreation and exercise facilities;
 - (v) the entitlement to receive or refuse visitors, including visits by members of the police force;
 - (vi) the conditions subject to which mail may be sent and received and telephone calls made;
 - (vii) the availability of reading materials and other means of occupation;
 - (viii) the provision of religious instruction or guidance; and
 - (ix) the keeping of records relating to detainees; and
- (e) the imposition of penalties, not exceeding \$1,000, for offences against the regulations.