



New South Wales

# Children (Detention Centres) Amendment Regulation 2009

under the

Children (Detention Centres) Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children (Detention Centres) Act 1987*.

GRAHAM WEST, MP  
Minister for Juvenile Justice

## Explanatory note

Under the *Children (Detention Centres) Act 1987*, the Director-General may, subject to the regulations, grant day leave and overnight leave to detainees for certain purposes, such as education, training or employment. The object of this Regulation is to replace the current provisions that prescribe the circumstances in which a detainee is eligible for leave. The new scheme will effectively make detainees who are being held for less serious offences eligible for leave earlier than was previously the case.

The Regulation also provides that the Director-General may grant leave to a detainee at any time if satisfied that exceptional circumstances justify the grant of leave.

This Regulation is made under the *Children (Detention Centres) Act 1987*, including sections 24 and 45 (the general regulation-making power).

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Clause 1 Children (Detention Centres) Amendment Regulation 2009

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# **Children (Detention Centres) Amendment Regulation 2009**

under the

Children (Detention Centres) Act 1987

### **1 Name of Regulation**

This Regulation is the *Children (Detention Centres) Amendment Regulation 2009*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

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## Schedule 1      Amendment of Children (Detention Centres) Regulation 2005

### [1]    Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

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

### [2]    Clause 3 (1), definition of “detention period”

Omit the definition.

### [3]    Clause 45 Definitions

Insert in alphabetical order:

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

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

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

### [4]    Clause 45, definitions of “escorted absence”, “fixed term” and “non-parole period”

Omit the definitions.

### [5]    Clauses 47 and 48

Omit the clauses. Insert instead:

#### **47    Day leave**

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

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paragraph (a) applies)—the person has served at least one third of the person's detention period, or

(c) in the case of any other person subject to control—the person has served at least one quarter of the person's detention period.

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

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

### 48 Overnight leave

(1) A person subject to control may be granted overnight leave only if:

(a) in the case of a person who is being detained for a serious children's indictable offence and who is serving a detention period of more than 2 years—there is 6 months or less left until the person's earliest release date, or

(b) in the case of a classified person who is being detained for an indictable offence (not being a person to whom paragraph (a) applies)—the person has served at least two thirds of the person's detention period, or

(c) in the case of any other person subject to control—the person has served at least one half of the person's detention period.

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

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