



New South Wales

Children (Detention Centres) Amendment (Parole) Regulation 2018

under the

Children (Detention Centres) Act 1987

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

DAVID ELLIOTT, MP
Minister for Corrections

Explanatory note

The object of this Regulation is to amend the *Children (Detention Centres) Regulation 2015* as follows, as a result of the commencement of Part 4C of the *Children (Detention Centres) Act 1987*, which relates to parole for juvenile offenders:

- (a) to update references to enabling provisions and expressions to reflect the new Part 4C,
- (b) to set out the matters to be included in a report prepared by a juvenile justice officer for the purposes of the Children's Court's determination as to whether to release an offender on parole,
- (c) to set out the obligations of a juvenile offender under the mandatory supervision condition of a parole order,
- (d) to prescribe the matters that a juvenile justice officer is to take into account when determining whether to suspend a supervision condition of a parole order,
- (e) to provide for notice to be given to the Secretary of changes to conditions of parole made by the Children's Court,
- (f) to require the Children's Court to provide copies of reports and other documents proposed to be used by the Court in deciding whether to release an offender on parole if the Court is notified that the State, the Minister, the Attorney General or the Secretary intends to make a submission concerning the release on parole of a juvenile offender,
- (g) to omit provisions that are no longer applicable to parole for juvenile offenders,
- (h) to make it clear that the new provisions relating to conditions of parole orders do not extend to existing parole orders,
- (i) to make other minor consequential amendments.

This Regulation is made under the *Children (Detention Centres) Act 1987*, including sections 46 (5), 53 (1), 55 (1) and (2), 57, 82 (6), 86 (6), 97 and 109 (the general regulation-making power) and clause 1A of Schedule 1.

Children (Detention Centres) Amendment (Parole) Regulation 2018

under the

Children (Detention Centres) Act 1987

1 Name of Regulation

This Regulation is the *Children (Detention Centres) Amendment (Parole) Regulation 2018*.

2 Commencement

This Regulation commences on 26 February 2018 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Children (Detention Centres) Regulation 2015

[1] Clause 90 Definitions

Omit the definitions of *applied Act*, *parole order* and *supervisor*.

Insert in alphabetical order:

parole order means a parole order made by the Children's Court under Part 4C of the Act or a statutory parole order within the meaning of that Part.

[2] Clause 90 (2)

Insert at the end of clause 90:

- (2) Words and expressions used in this Part have the same meaning as in Part 4C of the Act.

[3] Clause 91

Omit the clause. Insert instead:

91 Preparation of reports by juvenile justice officer

- (1) For the purposes of section 46 (5) of the Act, a report prepared by a juvenile justice officer (a *parole report*) must address the following matters:
 - (a) whether or not the officer recommends that a parole order be made for the juvenile offender,
 - (b) the juvenile offender's overall behavioural response while in detention,
 - (c) the juvenile offender's willingness to participate, and participation, in rehabilitation, work, education or other programs in custody and the availability of those programs,
 - (d) how the juvenile offender would be managed in the community, including the measures to be taken to assist the offender while on parole,
 - (e) any significant community support available to the juvenile offender on discharge,
 - (f) any additional matters that the Children's Court considers necessary for its consideration of parole.
- (2) The parole report must also contain the following material relating to the juvenile offender, if it is available:
 - (a) a psychological or psychiatric assessment,
 - (b) a copy of any current court orders,
 - (c) a copy of the sentencing court's comments at the time of sentencing.
- (3) A parole report for a juvenile offender is not required to include a matter referred to in subclause (1) (b)–(f) or material referred to in subclause (2) if a previous parole report has been prepared for the offender and the juvenile justice officer is of the opinion that the particulars of that matter or material have not changed since the previous report was prepared.
- (4) Despite subclause (3), the Children's Court may require a parole report for a juvenile offender to include any or all of the matters or material referred to in that subclause.

- [4] **Clause 92 Parole orders**
Omit “made under the applied Act” from clause 92 (1).
- [5] **Clauses 92 (2) and (3), 93, 94, 98 (3) and (4), 99, 100 (1) and (2), 101 (2)–(4), 102 (1) and (2) and 106 and Schedule 2, Forms 2 and 3**
Omit “detainee” wherever occurring. Insert instead “juvenile offender”.
- [6] **Clauses 93 (1), 98 (4) (c), 99 (3), 100 (2) (c), 101 (4) and 102 (2) (c) and Schedule 2, Form 3**
Omit “detainee’s” wherever occurring. Insert instead “juvenile offender’s”.
- [7] **Clause 94 Standard conditions of parole**
Omit “section 128 (1) (a) of the applied Act”. Insert instead “section 53 (1) of the Act”.
- [8] **Clause 94 (a) and (c)**
Insert “, while on release on parole,” after “must” wherever occurring.
- [9] **Clause 94 (b)**
Insert “, while on release on parole,” after “must not”.
- [10] **Clauses 95–97**
Omit the clauses. Insert instead:
- 95 Supervision conditions**
- (1) For the purposes of section 55 (1) of the Act, a juvenile offender who is subject to supervision under a condition of parole imposed by that section (a *supervision condition*) has the following obligations:
- (a) to comply with all reasonable directions of a juvenile justice officer relating to any of the following:
- (i) reporting to the officer or the officer’s nominee,
 - (ii) the place in which the juvenile offender is to reside,
 - (iii) participating in programs, treatment, interventions or other related activities,
 - (iv) without limiting subparagraph (iii), participating in employment, education, training or other related activities,
 - (v) not undertaking specified employment, education, training, volunteer, leisure or other activities,
 - (vi) not associating with a specified person,
 - (vii) not frequenting or visiting a specified place or area,
 - (viii) requirements for the purpose of monitoring compliance with the parole order,
- (b) to comply with any other reasonable directions of a juvenile justice officer,
- (c) to permit a juvenile justice officer to visit the offender at the offender’s place of residence at any reasonable time and, for that purpose, to enter the premises,
- (d) to notify a juvenile justice officer of any change to his or her place of residence, contact details or employment:
- (i) if practicable, before the change occurs, or

- (ii) if that is not practicable, within 7 days of the change occurring,
 - (e) not to leave New South Wales without the permission of a juvenile justice officer,
 - (f) not to leave Australia without the permission of the Children's Court.
- (2) For the purposes of section 55 (2) of the Act, the period of supervision under a supervision condition imposed on a parole order is:
 - (a) the lesser of 3 years or the period that the parole order is in force, in the case of a classified person, or
 - (b) the lesser of 2 years or the period that the parole order is in force, in any other case.
- (3) The period of supervision commences when the juvenile offender is released on parole.
- (4) Supervision of a juvenile offender who is subject to a supervision condition is to be carried out by a juvenile justice officer assigned by a more senior juvenile justice officer to supervise the offender.
- (5) A juvenile justice officer may from time to time assign another juvenile justice officer to supervise the juvenile offender and, in that event, must cause notice of that fact to be sent to the offender.

96 Suspension of supervision conditions

- (1) A juvenile justice officer must take the following matters into account before deciding under section 57 of the Act to make an order (a *suspension order*) suspending the application of a supervision condition to a juvenile offender:
 - (a) the risk of the offender re-offending,
 - (b) the seriousness of the offender's criminal history,
 - (c) the likely benefits of the supervision condition continuing to apply and the effect of any other measures that are being, or may be, taken to address the risk of the offender re-offending,
 - (d) the resources available to supervise the offender and other offenders who may be at a higher risk of re-offending.
- (2) A juvenile justice officer must not make a suspension order unless the suspension is approved by a more senior juvenile justice officer.
- (3) The Secretary is required to give notice to a juvenile offender of the making or revocation of a suspension order.
- (4) A juvenile offender who is subject to a suspension order must notify a juvenile justice officer of any change to the offender's place of residence or contact details.
- (5) The suspension of a supervision condition takes effect when notice of the order has been given to the offender.
- (6) The revocation of a suspension order takes effect when notice of the revocation is given to the juvenile offender under this clause.

97 Changes to conditions of parole order

If a notice has been given to a juvenile offender under section 53 (2) of the Act, the Registrar of the Children's Court must send written advice to the Secretary that the notice has been given and must include with the advice a copy of the notice.

- [11] Clause 98 Revocation of parole order before release**
Omit clause 98 (1) and (2).
- [12] Clause 98 (3) and (5)**
Omit “section 130 of the applied Act” wherever occurring.
Insert instead “section 63 of the Act”.
- [13] Clause 98 (4) (c)**
Omit “review”. Insert instead “reconsideration”.
- [14] Clause 99 Intention to refuse parole**
Omit “section 139 (1) (a) of the applied Act” from clause 99 (1).
Insert instead “section 89 of the Act of a decision not to make a parole order for a juvenile offender”.
- [15] Clause 99 (4)**
Omit the subclause.
- [16] Clause 100 Decision to refuse parole following reconsideration**
Omit “section 141 (4) (b) of the applied Act” from clause 100 (1).
Insert instead “section 89 of the Act of a decision by the Children’s Court not to make a parole order following the reconsideration of a decision to refuse parole”.
- [17] Clause 101 Revocation of parole order and reconsideration of revocation**
Omit clause 101 (1). Insert instead:
 - (1) A notice under section 89 of the Act of a decision by the Children’s Court to revoke a parole order or to uphold the revocation of a parole order on a reconsideration is to be in the form approved by the President of the Court.
- [18] Clause 101 (5)**
Omit the subclause.
- [19] Clause 102 Decision on reconsideration of revocation**
Omit “a review under section 175 of the applied Act” from clause 102 (1).
Insert instead “a reconsideration under Division 7 of Part 4C of the Act of the revocation of a parole order”.
- [20] Clauses 103 and 104**
Omit the clauses.
- [21] Clause 105 Arrest warrants**
Omit “section 180 of the applied Act”. Insert instead “section 82 of the Act”.
- [22] Clause 106 Warrants of commitment**
Omit “section 181 of the applied Act”. Insert instead “section 82 of the Act”.

[23] Clauses 107A–107C

Insert after clause 107:

107A Serious offenders about whom State may make submissions

For the purposes of section 86 of the Act, the class of juvenile offenders who are serving a sentence of imprisonment, or are subject to a detention order, after being convicted of an offence involving violence (within the meaning of section 49 of the Act) are serious offenders.

107B Children’s Court to supply documents for submissions

- (1) This clause applies if any of the following notifies the Children’s Court of a possible intention to make a submission under the Act concerning the release on parole of a juvenile offender:
 - (a) the State,
 - (b) the Minister or the Attorney General,
 - (c) the Secretary.
- (2) The Court must give the State, the Minister, the Attorney General or the Secretary copies of the reports and other documents intended to be used by the Court in deciding whether the juvenile offender should be released on parole.

107C Records of proceedings

The Children’s Court must keep a record (in writing or otherwise) of the proceedings of the Court relating to parole, including a record of:

- (a) whether the Minister or the Attorney General has appeared or been represented before the Court, and
- (b) the persons appearing or represented before the Court, and
- (c) the submissions, if any, made by the Minister or the Attorney General or a person referred to in paragraph (b), and
- (d) the reasons, if any, stated in support of the submissions.

[24] Clause 155

Insert after clause 154:

155 Conditions—transitional provision

- (1) A parole order for a juvenile offender that was in force immediately before the commencement of Part 4C of the Act continues to be subject to the same conditions (the *existing conditions*) to which it was subject immediately before that commencement.
- (2) For the purposes of subclause (1), the former parole provisions, and regulations in force under those provisions, continue to apply to a parole order referred to in that subclause.
- (3) Nothing in this clause prevents the variation or revocation of an existing condition under Part 4C of the Act.
- (4) In this clause:
former parole provisions means the provisions of the *Crimes (Administration of Sentences) Act 1999*, as applied by section 29 of the Act before its repeal by the *Parole Legislation Amendment Act 2017*.

[25] Schedule 2 Forms

Omit Form 1.

[26] Schedule 2, Form 2

Omit “section 29,”. Insert instead “section 82”.

[27] Schedule 2, Form 2

Omit “*Crimes (Administration of Sentences) Act 1999*, section 180”.

[28] Schedule 2, Form 2

Omit “section 180 of the *Crimes (Administration of Sentences) Act 1999*, as applied by section 29”.

Insert instead “section 82”.

[29] Schedule 2, Form 3

Omit “section 29,”. Insert instead “section 82”.

[30] Schedule 2, Form 3

Omit “*Crimes (Administration of Sentences) Act 1999*, section 181”.

[31] Schedule 2, Form 3

Omit “section 181 of the *Crimes (Administration of Sentences) Act 1999*, as applied by section 29”.

Insert instead “section 82”.