



New South Wales

Crimes (Administration of Sentences) Amendment (Parole) Regulation 2018

under the

Crimes (Administration of Sentences) Act 1999

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Crimes (Administration of Sentences) Act 1999*.

DAVID ELLIOTT, MP
Minister for Corrections

Explanatory note

The object of this Regulation is to amend the *Crimes (Administration of Sentences) Regulation 2014* as follows:

- (a) to set out conditions of parole, and the period of supervision, for juvenile offenders whose parole is transferred to the adult parole system,
- (b) to set out the obligations of an offender who is subject to a mandatory condition of supervision under a parole order,
- (c) to provide that the period of supervision is to be not more than 3 years or the term of the order, whichever is the shorter period, and may be extended for a further period of up to 3 years in the case of a serious offender,
- (d) to set out matters to be taken into account before a supervision condition may be suspended and to provide for other related matters,
- (e) to make other consequential amendments as a result of the commencement of provisions establishing supervision as a mandatory condition of a parole order,
- (f) to remove a restriction on requests by community corrections officers for early reconsideration of decisions by the Parole Authority to refuse or revoke parole,
- (g) to remove a requirement for the Minister for Corrections to approve the form of parole orders,
- (h) to extend new supervision provisions to existing offenders who are subject to supervision, and to provide for other transitional matters.

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 128, 128B (2) (a), 128C (1) and (2), 128E (2), (3) and (6) (c), 137B and 271 (the general regulation-making power) and clause 1 of Schedule 5.

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Crimes (Administration of Sentences) Act 1999

1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) 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 Crimes (Administration of Sentences) Regulation 2014

[1] Clause 214 Standard conditions applying to parole

Insert at the end of the clause:

- (2) If the Act applies to the offender because of section 40 (4) of the *Children (Detention Centres) Act 1987*, the conditions set out in subclause (1) replace the standard conditions of parole for an offender that applied before the offender became subject to the Act.

[2] Clause 214, note to clause

Omit “section 170”. Insert instead “section 170A”.

[3] Clause 214A

Insert after clause 214:

214A Supervision conditions

- (1) For the purposes of sections 128B (2) (a) and 128C (1) of the Act, an offender who is subject to supervision under a condition of parole imposed by those sections (a *supervision condition*) has the following obligations:
 - (a) after release under the parole order, to report:
 - (i) to a community corrections officer at a time and place directed before release, or
 - (ii) if no direction is given, at an office of Community Corrections within 7 days of release,
 - (b) to report to a community corrections officer at the times and places directed by the officer,
 - (c) to comply with all reasonable directions of a community corrections officer relating to any of the following:
 - (i) the place in which the offender is to reside,
 - (ii) participating in programs, treatment, interventions or other related activities,
 - (iii) without limiting subparagraph (ii), participating in employment, education, training or other related activities,
 - (iv) not undertaking specified employment, education, training, volunteer, leisure or other activities,
 - (v) not associating with a specified person,
 - (vi) not frequenting or visiting a specified place or area,
 - (vii) ceasing drug use,
 - (viii) ceasing or reducing alcohol use,
 - (ix) drug and alcohol testing,
 - (x) requirements for the purposes of monitoring compliance with the parole order,
 - (xi) to give consent to third parties providing information to a community corrections officer about the offender’s compliance with the parole order,
 - (d) to comply with any other reasonable directions of a community corrections officer,

- (e) to permit a community corrections officer to visit the offender at the offender's place of residence at any time and, for that purpose, to enter the premises,
 - (f) to notify a community corrections 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,
 - (g) not to leave New South Wales without the permission of a community corrections manager,
 - (h) not to leave Australia without the permission of the Parole Authority.
- (2) For the purposes of section 128C (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, or
 - (b) if the Act applies to the offender because of section 40 (4) of the *Children (Detention Centres) Act 1987*, the period of supervision applicable to the offender immediately before the offender became subject to the Act.
- (3) In the case of a serious offender, the Parole Authority may while the parole order is in force extend the period of supervision by, or impose a further period of supervision of, up to 3 years at a time.
- (4) Supervision of an offender who is subject to a supervision condition is to be carried out by a community corrections officer.

[4] Clause 216

Omit the clause. Insert instead:

216 Parole orders

A copy of a parole order made by the Parole Authority must be given to the offender, and further copies are to be sent to:

- (a) the governor of the correctional centre in which the offender is kept, and
- (b) the Commissioner.

[5] Clauses 218–220

Omit clauses 218–220. Insert instead:

218 Suspension of supervision conditions

- (1) A community corrections officer must take the following matters into account before deciding under section 128E of the Act to make an order (a *suspension order*) suspending the application of a supervision condition to an 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 community corrections officer must not make a suspension order unless the suspension is approved by an officer more senior than the community corrections officer.
- (3) Community Corrections is required to give notice to an offender of the making or revocation of a suspension order.
- (4) An offender who is subject to a suspension order must give notice at an office of Community Corrections 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 offender under this clause.

[6] Clause 222 Revocation of parole orders before release

Omit clause 222 (1).

[7] Clause 223 Circumstances constituting manifest injustice

Omit "and less than 12 months of the offender's sentence remains to be served" from clause 223 (1) (d).

Insert instead "(other than where parole has been revoked because the offender, while on parole, committed an offence)".

[8] Schedule 6 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate clause numbering:

Application of supervision provisions to existing offenders

Sections 128C–128E of the Act, as inserted by the *Parole Legislation Amendment Act 2017*, extend to a parole order and to the offender subject to the parole order if the parole order:

- (a) was in force immediately before the commencement of those sections, and
- (b) included a condition that was in force requiring that the offender be subject to supervision.

Conditions of parole for existing adult offenders

- (1) This clause applies to an offender who was, immediately before the commencement of section 128C of the Act, as inserted by the *Parole Legislation Amendment Act 2017*, subject to a parole order:
 - (a) made by the Parole Authority, or
 - (b) made by the Children's Court and administered by Community Corrections.
- (2) The parole order for the offender is taken to be subject to the following conditions:
 - (a) the conditions (other than any supervision condition) applicable to the offender immediately before that commencement,
 - (b) any conditions applicable to the offender because of the application to offenders of sections 128C–128E of the Act by this Schedule.

- (3) Nothing in this clause prevents a condition applied to a parole order by this clause from being amended, suspended or revoked in accordance with the Act or this Regulation.

Transitional arrangements for home detention conditions

- (1) This clause applies to an offender who is subject to a home detention condition imposed under section 170A (3) (a) of the Act.
- (2) The offender has the following obligations:
- (a) to remain at the offender's place of residence at all times otherwise than:
 - (i) when engaged in activities approved by a community corrections officer, or
 - (ii) when faced with immediate danger (for example, in a fire or medical emergency),
 - (b) to submit a schedule of proposed activities for approval by a community corrections officer,
 - (c) to comply with all reasonable directions of a community corrections officer about authorising contact between the officer and any third party for the purpose of checking compliance with the approved activities,
 - (d) to submit to electronic monitoring,
 - (e) to comply with all reasonable directions of a community corrections officer or electronic monitoring officer in relation to the electronic monitoring of the offender,
 - (f) not to remove or tamper with, damage or disable electronic monitoring equipment,
 - (g) not to possess or have in his or her control any firearm or any prohibited weapon (within the meaning of the *Weapons Prohibition Act 1998*), unless an exemption is granted by a community corrections manager.
- (3) In this clause, *electronic monitoring officer* means any person who is employed for the purpose of monitoring offenders who are subject to electronic monitoring.
- (4) This clause ceases to have effect on the commencement of section 124H of the Act.