



New South Wales

Children (Detention Centres) Amendment 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 objects of this Regulation are as follows:

- (a) to enable the Secretary of the Department of Justice (the *Secretary*) to designate a detainee as a national security interest detainee if the detainee has been charged with or convicted of certain terrorism offences, has associations with a terrorist organisation, has made statements or carried out activities advocating support for terrorist acts or violent extremism and if there is a risk that the detainee may engage in, or incite, activities that constitute a serious threat to the peace, order or good government of the State or any other place,
- (b) to permit the Secretary to direct that national security interest detainees be detained separately from other national security interest detainees,
- (c) to require visitors to national security interest detainees to be approved by the Secretary and to allow the Secretary to require a person to undergo a criminal record check before being approved as a visitor,
- (d) to require letters and parcels sent to or by national security interest detainees to be opened, inspected and read,
- (e) to prevent national security interest detainees from communicating by letter with national security interest detainees in other detention centres and certain adult inmates in correction centres,
- (f) to require monitoring of certain telephone calls made by national security interest detainees,
- (g) to further provide for the searching of detainees in detention centres, including by providing that searches may be conducted by running a hand-held metal detector over a detainee's outer garments or by means of a pat-down or partially clothed search.

This Regulation is made under the *Children (Detention Centres) Act 1987*, including sections 16, 32A and 109 (the general-regulation making power).

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Children (Detention Centres) Act 1987

1 Name of Regulation

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

2 Commencement

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

Schedule 1 Amendment of Children (Detention Centres) Regulation 2015

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

national security interest detainee means a detainee who is designated as a national security interest detainee under clause 7A.

[2] Clauses 7A and 7B

Insert after clause 7:

7A Designation of national security interest detainees

- (1) The Secretary may designate a detainee as a national security interest detainee if the Secretary is satisfied that:
 - (a) the detainee:
 - (i) has, at any time, been charged with or convicted of a terrorism offence, or
 - (ii) is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code, or
 - (iii) has any associations with a terrorist organisation, or
 - (iv) has made statements or carried out activities advocating support for terrorist acts or violent extremism, or
 - (v) has any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism, and
 - (b) there is a risk that the detainee may engage in, or incite other persons to engage in, activities that constitute a serious threat to the peace, order or good government of the State or any other place.
- (2) The Secretary may at any time revoke the designation of a detainee as a national security interest detainee.
- (3) The Secretary may refer a matter relating to the designation of a detainee as a national security interest detainee to the Review Panel.
- (4) In this clause:

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

terrorism offence means a terrorism offence within the meaning of the *Crimes Act 1914* of the Commonwealth or an offence under section 310J of the *Crimes Act 1900*.

terrorist act has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.

terrorist organisation has the same meaning as it has in Division 102 of Part 5.3 of the Commonwealth Criminal Code.

7B National security interest detainees may be detained separately from each other

- (1) The Secretary may direct that a national security interest detainee be detained separately from any other national security interest detainees.
- (2) This clause does not authorise a national security interest detainee to be segregated under section 19 of the Act merely because the detainee is designated as a national security interest detainee.

[3] Clause 11A

Insert after clause 11:

11A Searching of detainees

- (1) For the purpose of ensuring the security, safety and good order of a detention centre, a juvenile justice officer may:
 - (a) search a detainee, and
 - (b) search a detainee's room and any property in the room.
- (2) A search of a detainee may be conducted by the following means only:
 - (a) running a hand-held metal detector (of a kind approved by the Secretary) over the detainee's outer garments,
 - (b) a pat-down,
 - (c) a partially clothed search.
- (3) A *pat-down* of a detainee means:
 - (a) searching the detainee by running the juvenile justice officer's hands over the detainee's outer garments, and
 - (b) examining anything worn or carried by the detainee that is conveniently removed by the detainee.
- (4) A *partially clothed search* of a detainee means any of the following:
 - (a) requiring the detainee to remove clothes from the top or bottom half of the detainee's body for examination of the clothes (and repeating the process for the other half of the detainee's body),
 - (b) visually examining the detainee's body,
 - (c) requiring the detainee to open the detainee's mouth to enable it to be visually examined,
 - (d) examining the detainee's removed clothes by touch.
- (5) However, a juvenile justice officer conducting a partially clothed search may not:
 - (a) require the detainee to remove all of the detainee's clothes at once, or
 - (b) search the detainee's body cavities (other than the detainee's mouth), or
 - (c) examine the detainee's body by touch.
- (6) A search under this clause must be conducted with due regard to the dignity, self-respect and well-being of the detainee and as quickly as is reasonably practicable.
- (7) A search under this clause must be conducted in accordance with any directions of the Secretary about the conduct of searches under this clause, including in relation to the times at which and the circumstances in which a search may be conducted.
- (8) Except in the case of an emergency, a pat-down or partially clothed search of a detainee must be conducted:
 - (a) by a person of the same sex as the detainee (or by a person of the sex chosen by the detainee in the case of a transgender or intersex detainee), and
 - (b) in the presence of another person (who, in the case of a partially clothed search, is able to observe the person conducting the search only and not the detainee).

- (9) A partially clothed search of a detainee must not be conducted as part of the general routine of a detention centre, except in the case of a detainee being admitted to a detention centre or returning to a detention centre following day leave or overnight leave.

[4] Clause 30A

Insert after clause 30:

30A Visits to national security interest detainees

- (1) A person may visit a national security interest detainee only if the person has been approved by the Secretary as a visitor to that detainee.
- (2) The Secretary may require a visitor to undergo a criminal record check before approving the person as a visitor to a national security interest detainee.
- (3) The Secretary is to ensure that any criminal record check of a visitor to a national security interest detainee is carried out as quickly as is practicable.
- (4) The Secretary may refuse to approve a person as a visitor to a national security interest detainee on the basis of a criminal record check or national security concerns.
- Note.** The Secretary may also ban a person from visiting a particular detention centre or detention centres generally or from visiting a particular detainee or detainees generally under clause 37.
- (5) The Secretary may revoke an approval of a person as a visitor to a national security interest detainee at any time.
- (6) This clause does not apply to a visit to a national security interest detainee by an exempt person or an officer of an exempt body.

[5] Clause 40 Inspection of mail and parcels

Insert after clause 40 (1):

- (1A) The centre manager of a detention centre must open, inspect and read any letter or parcel sent to or by a national security interest detainee and, if it contains prohibited goods, may confiscate the letter or parcel and its contents and deal with them in accordance with the directions of the Secretary.

[6] Clause 42 Communication with detainees and inmates in other detention centres and correctional centres

Insert at the end of the clause:

- (2) Despite subclause (1), a national security interest detainee must not communicate by letter with:
- (a) a national security interest detainee in another detention centre, or
- (b) a category AA, category 5 or national security interest inmate in a correctional centre.

[7] Clause 44 Monitoring of telephone calls

Insert after clause 44 (1):

- (1A) The Secretary must arrange for an officer authorised for the purpose to monitor all telephone calls made by a national security interest detainee (other than communications referred to in subclause (4)).

[8] Clause 65 Use of force

Insert after clause 65 (1) (f):

Note. All searches of a detainee must be conducted in accordance with clause 11A.