

Parole Legislation Amendment Act 2017 No 57

[2017-57]



New South Wales

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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Parole Legislation Amendment Act 2017 No 57



New South Wales

An Act to amend the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987* with respect to parole for adult and juvenile offenders and re-integration home detention orders for adult offenders; and for other purposes.

1 Name of Act

This Act is the *Parole Legislation Amendment Act 2017*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of *Crimes (Administration of Sentences) Act 1999 No 93*

[1] Section 3 Interpretation

Omit the definition of **parole order** from section 3 (1). Insert in alphabetical order:

parole order means an order in force under section 138, 141, 149, 150, 154A, 158 or 160 of this Act.

parole revocation order means an order made under Division 3 of Part 7 revoking a parole order.

re-integration home detention order means an order made under section 124D.

statutory parole order—see section 158.

[2] Section 8 Release from custody

Insert “under a re-integration home detention order or” before “on parole” in section 8 (1).

[3] Part 5A

Insert before Part 6:

Part 5A Re-integration home detention

124A Definitions

In this Part:

assessment report means a report prepared under section 124C (1).

initiating request means a request made by a community corrections officer under section 124C (2) that the Parole Authority make a re-integration home detention order.

124B Offenders for whom re-integration home detention order cannot be made

- (1) A re-integration home detention order cannot be made for a serious offender or for an offender who is serving a sentence for any of the following offences (an **excluded offence**):
 - (a) a domestic violence offence within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*,
 - (b) a child sexual offence within the meaning of section 21A of the *Crimes (Sentencing Procedure) Act 1999*,
 - (c) a serious sex offence or a serious violence offence within the meaning of the *Crimes (High Risk Offenders) Act 2006*,
 - (d) a terrorism offence within the meaning of Division 3A of Part 6.
- (2) Subsection (1) does not prevent:
 - (a) the carrying out of an assessment of the suitability of an offender (other than a serious offender) for a re-integration home detention order in respect of an offence other than an excluded offence, or
 - (b) the making of a re-integration home detention order for an offender who has been convicted of an excluded offence (other than a serious offender) if the offender will no longer be serving a sentence for any excluded offence on the commencement of the order.

124C Assessment of offender

- (1) A community corrections officer who considers that an offender may be suitable for a re-integration home detention order may arrange for the preparation of an assessment report as to the suitability of the offender for home detention for the purposes of re-integration into the community.
- (2) If an assessment report states that an offender is a suitable person to be subject

to home detention for the purposes of re-integration into the community, a community corrections officer:

- (a) may request the Parole Authority to make a re-integration home detention order for the offender, and
 - (b) must provide the report to the Parole Authority before the Parole Authority considers whether or not to make the order.
- (3) If an assessment report does not state that an offender is a suitable person to be subject to home detention for the purposes of re-integration into the community, the report is to be provided to the Parole Authority. The Parole Authority may refer the matter back to a community corrections officer for further consideration of the offender's suitability for home detention.

124D Offenders may be released subject to home detention conditions

- (1) The Parole Authority may make an order (a ***re-integration home detention order***) directing that an offender be released subject to a home detention condition if:
 - (a) an initiating request has been made relating to the offender, and
 - (b) the offender is serving at least 1 sentence for which the non-parole period has not expired and would be eligible to be released on parole on the expiry of the re-integration home detention order, and
 - (c) the Parole Authority has decided to make a parole order that takes effect at the end of the re-integration home detention order (in the case of a sentence of more than 3 years) or has not revoked the statutory parole order directing the release of the offender on parole (in the case of a sentence of 3 years or less), and
 - (d) the Parole Authority is satisfied that it is in the interests of the safety of the community to make the order, and
 - (e) the assessment report on the offender states that the offender is a suitable person to be subject to home detention for re-integration purposes, and
 - (f) the offender has signed an undertaking to comply with the offender's obligations under the order.
- (2) For the purpose of being satisfied that it is in the interests of the safety of the community to make a re-integration home detention order, the Parole Authority is to consider the matters set out in section 135 (2) and (3) as if they applied to the offender's release under the order.
- (3) A re-integration home detention order may be made only in respect of a period

that occurs before the parole eligibility date of an offender.

- (4) An offender's re-integration home detention order is sufficient warrant for any person having custody of the offender to release the offender in accordance with the terms of the order.

124E Order may be refused despite favourable assessment report

The Parole Authority may, for any reason it thinks fit, refuse to make a re-integration home detention order despite the contents of an assessment report.

124F Sentences of more than 3 years

- (1) This section applies if an initiating request is made relating to an offender serving a sentence of more than 3 years for which a non-parole period has been set.
- (2) The Parole Authority is to consider whether or not to make a parole order for the offender when considering whether or not to make a re-integration home detention order for the offender.
- (3) Despite any other provision of this Act, the Parole Authority may consider whether or not an offender should be released on parole, and may make a parole order, at any time necessary to allow a re-integration home detention order to take effect before the offender's parole eligibility date.

124G Duration of orders

- (1) A re-integration home detention order must not take effect earlier than 6 months before the day on which the parole order directing the release of the offender is to take effect.
- (2) A re-integration home detention order takes effect on a day specified by the Parole Authority and ceases to have effect:
 - (a) when a parole order directing the release of the offender takes effect, or
 - (b) if it is revoked before the parole order takes effect.

124H Conditions of orders

- (1) The regulations may prescribe the standard conditions to be imposed on re-integration home detention orders.
- (2) The Parole Authority may from time to time, by notice given to the offender, impose additional conditions on, or vary or revoke conditions of, a re-integration home detention order.
- (3) The Parole Authority must not take any action under subsection (2) or section

124I (4) or 168D (2) that is inconsistent with the application of conditions prescribed under subsection (1).

124I Review of suitability for parole during re-integration period

- (1) This section applies:
 - (a) to an offender who is serving a sentence of more than 3 years and who is subject to a re-integration home detention order, or
 - (b) to any offender who is subject to a re-integration home detention order, if a community corrections officer recommends to the Parole Authority that the offender should be subject to a review under this section.
- (2) A community corrections officer is to arrange for the preparation of a report as to the suitability of the offender for release on parole and is to provide the report to the Parole Authority before the re-integration home detention order expires.
- (3) The report is to address the matters prescribed by the regulations for the purposes of this section.
- (4) After considering the report and the suitability of the offender to be released on parole, the Parole Authority may:
 - (a) take no further action, or
 - (b) impose additional conditions on the re-integration home detention order or parole order, or
 - (c) vary or revoke conditions of the re-integration home detention order or parole order, or
 - (d) without limiting paragraph (b) or (c), make an order amending the parole order to impose a requirement that the offender remain at a specified place of residence for a specified period of home detention, or
 - (e) make an order revoking the re-integration home detention order, or
 - (f) make an order revoking the parole order.
- (5) Section 124H and any regulations made under section 124J (e) apply to an offender who is subject to a condition of home detention imposed under this section in the same way as they apply to an offender who is subject to a re-integration home detention order.

124J Regulations

Regulations may be made for or with respect to the following matters:

- (a) consent to the making of a re-integration home detention order for an offender by or on behalf of a child, or a person who has impaired intellectual functioning (within the meaning of Part 13A), who is to reside with the offender,
- (b) additional matters for consideration by the Parole Authority when making a re-integration home detention order,
- (c) the matters to be addressed by an assessment report,
- (d) the preparation and furnishing of an assessment report,
- (e) the obligations of an offender while released on home detention under a re-integration home detention order,
- (f) the giving of notice of decisions under this Part to an offender.

[4] Section 128 Conditions of parole generally

Omit section 128 (1) (b).

[5] Section 128 (2) (b)

Omit “or by the sentencing court”.

[6] Section 128 (3)

Omit the subsection. Insert instead:

- (3) In determining whether to impose a condition on, or vary or revoke a condition of, a parole order under this section or any other provision of this Act or the regulations, the Parole Authority is to have regard to the following:
 - (a) whether the new condition, variation or revocation will assist in the management of a risk to community safety arising from the release of the offender on parole,
 - (b) the likely effect on any victim of the offender, and on any such victim’s family, of the new condition, variation or revocation,
 - (c) whether the new condition, variation or revocation will assist in the management of the risk of breaches of parole by the offender.

[7] Section 128 (4)

Omit “This section does not permit”.

Insert instead “Nothing in this section or section 124I or Division 3 of Part 7 permits”.

[8] Section 128 (4) (b)

Omit “or by the sentencing court”.

[9] Sections 128C-128E

Omit section 128C. Insert instead:

128C Conditions as to supervision

- (1) It is a condition of a parole order that the offender is to be subject to supervision, as prescribed by the regulations.
- (2) The period of supervision is to be the period specified by or under the order or under the regulations, except as provided by subsection (3).
- (3) The period of supervision for an offender released under a parole order made under section 160 is the whole of the period for which the parole order is in force.
- (4) If the offender is subject to a community supervision order under Part 4A, the conditions of that order prevail to the extent of any inconsistency with conditions imposed by or under this section.
- (5) The condition imposed by subsection (1) does not apply to an offender to whom section 128B applies.

128D Parole Authority may exempt from supervision condition in exceptional circumstances

- (1) The Parole Authority may, by order in writing, exempt an offender for a specified period from the condition imposed by section 128C (1) if the Parole Authority is satisfied that the exceptional circumstances of the case justify the exemption.
- (2) The exemption may be unconditional or subject to conditions.
- (3) The order is to specify the purpose for which it is granted.
- (4) For the purposes of this Act, a failure to comply with a condition of the exemption is taken to be a failure to comply with the obligations of the parole order. This subsection does not limit the power of the Parole Authority to revoke the exemption order.
- (5) An offender is not required to comply with the condition imposed under section 128C (1) if the offender is subject to an exemption.
- (6) The regulations may make provision for or with respect to the following:

- (a) the periods for which an exemption may be ordered,
- (b) notice to an offender of the making or revocation of an exemption order.

128E Suspension of certain parole conditions

- (1) This section applies to the following conditions of a parole order:
 - (a) a condition referred to in section 128A (1),
 - (b) a condition referred to in section 128C (1) (a ***supervision condition***),
 - (c) a curfew.
- (2) A community corrections officer may, by order in writing and subject to the regulations, suspend the application of a supervision condition to an offender for a period or periods or indefinitely.
- (3) A community corrections officer may, by order given orally or in writing and subject to the regulations, suspend the application of any other condition to which this section applies to an offender for a period or periods.
- (4) The suspension may be unconditional or subject to conditions.
- (5) For the purposes of this Act, a failure to comply with a condition of the suspension is taken to be a failure to comply with the obligations of the parole order. This subsection does not limit the power of the community corrections officer to revoke the suspension order.
- (6) The regulations may make provision for or with respect to the following:
 - (a) the periods for which a condition may be suspended,
 - (b) notice to an offender of the making or revocation of a suspension order,
 - (c) requiring the power to make, amend or revoke a suspension order to be exercised subject to and in accordance with any specified conditions.
- (7) This section does not apply to a condition imposed on the following offenders:
 - (a) an offender to whom section 128B applies,
 - (b) an offender released under a parole order made under section 160.

[10] Section 130 Revocation of parole order before release

Omit section 130 (1). Insert instead:

- (1) The Parole Authority may, by order in writing, revoke a parole order at any time

before the offender to whom the order relates is released under the order, if the Parole Authority is satisfied that:

- (a) the offender, if released, would pose a serious identifiable risk to the safety of the community and that the risk cannot be sufficiently mitigated by directions from a community corrections officer or by changing the conditions of parole, or
- (b) the offender, if released, would pose a serious and immediate risk to the offender's safety and that the risk cannot be sufficiently mitigated by directions from a community corrections officer or by changing the conditions of parole, or
- (c) the offender has failed to comply with the offender's obligations under a re-integration home detention order, or
- (d) a re-integration home detention order applying to the offender has been revoked, or
- (e) the offender has requested the revocation, or
- (f) in the case of a parole order made by the Parole Authority, there has been a substantial change to a matter considered by the Parole Authority in making the order, or
- (g) any other circumstance prescribed by the regulations for the purpose of this section exists.

Note—

A reference to a parole order includes a statutory parole order imposed under section 158 where the sentence is 3 years or less (see definition of **parole order** in section 3 (1)).

[11] Section 130 (3) and (4)

Insert after section 130 (2):

- (3) The Parole Authority may revoke a parole order under this section on its own initiative or on the recommendation of the Commissioner or a community corrections officer.

Note—

Division 3A of Part 6 sets out additional circumstances relating to the safety of the community in which the parole of individuals may be revoked before or after release if there are terrorism concerns.

- (4) The Attorney General or the Minister may request the Parole Authority to revoke a parole order under this section and may make any submissions they think fit to support the request.

[12] (Repealed)

[13] Part 6, Division 3

Omit the Division. Insert instead:

Division 3 Parole orders for sentences of 3 years or less

158 Statutory parole order

- (1) An offender who is subject to a sentence of 3 years or less, being a sentence for which a non-parole period has been set, is taken to be subject to a parole order (a **statutory parole order**) directing the release of the offender on parole at the end of the non-parole period.

Note—

The provisions of Divisions 1, 3A and 5 of this Part and of Part 7 applying to parole orders, including provisions relating to conditions, revocation and release, apply to statutory parole orders (see definition of **parole order** in section 3 (1)).

- (2) A statutory parole order is conditional on the offender being eligible for release on parole in accordance with section 126 at the end of the non-parole period of the sentence.
- (3) If the offender is not eligible for release at that time, the offender is entitled to be released on parole as soon as the offender becomes so eligible.
- (4) This section does not authorise the release on parole of an offender who is also serving a sentence of more than 3 years for which a non-parole period has been set unless the offender is entitled to be released under Division 2.

[14] Section 159C Limitation on release on parole of terrorism related offenders

Omit section 159C (4).

[15], [16] (Repealed)

[17] Part 7, heading

Omit the heading. Insert instead:

Part 7 Revocation and reinstatement, and sanctions for breaches, of certain orders

[18] Part 7, introductory note

Omit the note.

[19] Part 7, Division 2A

Insert before Division 3:

Division 2A Re-integration home detention orders

168B Definition of “revocation order”

In this Division:

revocation order means an order made by the Parole Authority under this Division revoking a re-integration home detention order.

168C Conduct of inquiry into suspected breach of obligations

- (1) If the Parole Authority has reason to suspect that an offender has failed to comply with the offender’s obligations under a re-integration home detention order, the Parole Authority may, whether or not the order has expired, conduct an inquiry into the matter.
- (2) The offender to whom the re-integration home detention order relates may make submissions to the Parole Authority in relation to the matters under inquiry.

168D Actions by Parole Authority on non-compliance with re-integration home detention order

- (1) This section applies if the Parole Authority is satisfied that an offender has failed to comply with the offender’s obligations under a re-integration home detention order.
- (2) The Parole Authority may take any of the following actions:
 - (a) record the breach and take no further action,
 - (b) give a formal warning to the offender,
 - (c) impose additional conditions on the re-integration home detention order,
 - (d) vary or revoke conditions of the re-integration home detention order,
 - (e) make an order revoking the re-integration home detention order.

Note—

The Parole Authority may also revoke the offender’s parole order if it is satisfied that the offender has failed to comply with the offender’s obligations under a re-integration home detention order (see sections 130 (1) (c) and 170B (1) (c)).

- (3) In deciding whether and what action should be taken in respect of the offender's breach of the re-integration home detention order, the Parole Authority may have regard to any action previously taken in respect of the breach or any earlier breaches of the order.

168E Circumstances for revocation in addition to non-compliance with re-integration home detention order

- (1) The Parole Authority may make an order revoking a re-integration home detention order:
 - (a) if it is satisfied that the offender poses a serious and immediate risk to the safety of the community, or
 - (b) if it is satisfied that there is a serious and immediate risk that the offender will leave New South Wales, or
 - (c) if it is satisfied that there has been a significant change in the circumstances of the offender that warrants revocation of the order, or
 - (d) if the parole order directing the release of the offender is revoked, or
 - (e) if the offender fails to appear before the Parole Authority when called on to do so under section 180, or
 - (f) if the offender has applied for the order to be revoked.
- (2) The Parole Authority may make a revocation order on its own initiative or on the recommendation of the Commissioner or a community corrections officer.

168F Revocation orders

- (1) A revocation order may be made:
 - (a) whether or not the offender has been called on to appear before the Parole Authority, and
 - (b) whether or not the Parole Authority has held an inquiry.
- (2) A revocation order takes effect, or is taken to have effect, on the date on which it is made or on any earlier date that the Parole Authority thinks fit.
- (3) If an offender is not taken into custody until after the day on which the revocation order takes effect:
 - (a) the term of the offender's sentence, and
 - (b) the non-parole period of the sentence,are, by this subsection, extended by the number of days the person was at large

after the order took effect.

168G Interim suspension of re-integration home detention order

- (1) On the application of the Commissioner, a judicial member of the Parole Authority:
 - (a) may make an order suspending an offender's re-integration home detention order (a **suspension order**), and
 - (b) if the offender is not then in custody, may issue a warrant for the offender's arrest.
- (2) An application may be made in person or by telephone, electronic mail or facsimile transmission.
- (3) The judicial member may only take action under this section if the judicial member is satisfied:
 - (a) that the Commissioner has reasonable grounds for believing:
 - (i) that the offender has failed to comply with the offender's obligations under the re-integration home detention order, or
 - (ii) that there is a serious and immediate risk that the offender will leave New South Wales in contravention of the conditions of the order, or
 - (iii) that there is a serious and immediate risk that the offender will harm another person, or
 - (iv) that there is a serious and immediate risk that the offender will commit an offence, and
 - (b) that, because of the urgency of the circumstances, there is insufficient time for a meeting of the Parole Authority to be convened to deal with the matter.
- (4) If an application under this section is made otherwise than in person, the judicial member may furnish the applicant with a suspension order or arrest warrant:
 - (a) by sending a copy of the order or warrant to the applicant by electronic mail or facsimile transmission, or
 - (b) by dictating the terms of the order or warrant to the applicant by telephone.
- (5) A document:
 - (a) that contains:
 - (i) a copy of a suspension order or arrest warrant that the judicial member has sent by electronic mail or facsimile transmission, or

- (ii) the terms of a suspension order or arrest warrant that the judicial member has dictated by telephone, and
 - (b) that bears a notation as to the identity of the judicial member and as to the time at which the copy was sent or the terms dictated,has the same effect as the original suspension order or arrest warrant.
- (6) A suspension order may be revoked by any judicial member of the Parole Authority or by the Commissioner.
- (7) Unless sooner revoked, a suspension order ceases to have effect at the end of 28 days after it is made or, if the offender is not in custody when it is made, at the end of 28 days after the offender is taken into custody.
- (8) While a suspension order is in force, the re-integration home detention order to which it relates does not have effect.
- (9) An arrest warrant under this section is sufficient authority for a police officer to arrest the offender named in the warrant, to convey the offender to the correctional centre specified in the warrant and to deliver the offender into the custody of the governor of that correctional centre.

[20] Sections 170-171

Omit sections 170 and 171. Insert instead:

170 Actions by Commissioner or community corrections officer on non-compliance with parole order

- (1) This section applies if the Commissioner or a community corrections officer is satisfied that an offender has failed to comply with the offender's obligations under a parole order.
- (2) A community corrections officer may take any of the following actions:
 - (a) record the breach and take no further action,
 - (b) give an informal warning to the offender,
 - (c) give, or arrange to be given to, the offender a formal warning that further breaches will result in referral to the Parole Authority,
 - (d) give a reasonable direction to the offender relating to the kind of behaviour by the offender that caused the breach,
 - (e) impose a curfew on the offender of up to 12 hours in any 24 hour period.

- (3) As an alternative, or in addition, to taking any such action, the Commissioner or a community corrections officer may decide to refer the breach to the Parole Authority because of the serious nature of the breach and may also make a recommendation as to the action that the Parole Authority may take in respect of the offender.
- (4) In deciding whether and what action should be taken in respect of the offender's breach of the parole order, the Commissioner or a community corrections officer may have regard to any action previously taken in respect of the breach or any earlier breaches of the order.
- (5) The regulations may make provision for or with respect to any action that may be taken by a community corrections officer under this section.

170A Actions by Parole Authority on non-compliance with parole order

- (1) This section applies if the Parole Authority is satisfied that an offender has failed to comply with the offender's obligations under a parole order.
- (2) The Parole Authority may take any of the following actions:
 - (a) record the breach and take no further action,
 - (b) give a formal warning to the offender,
 - (c) impose additional conditions on the parole order,
 - (d) vary or revoke conditions of the parole order,
 - (e) make an order revoking the parole order.
- (3) Without affecting the generality of subsection (2), the Parole Authority may impose a condition on the parole order of the following kind:
 - (a) a condition imposing a requirement that the offender remain at the offender's place of residence for a period of home detention of up to 30 days,
 - (b) a condition that the offender must submit to the use of an electronic monitoring device,
 - (c) ancillary conditions relating to any condition imposed under this section.
- (4) In deciding whether and what action should be taken in respect of the offender's breach of the parole order, the Parole Authority may have regard to any action previously taken in respect of the breach or any earlier breaches of the order.
- (5) Section 124H and any regulations made under section 124J (e) apply to an offender who is subject to a condition of home detention imposed under this

section in the same way as they apply to an offender who is subject to a re-integration home detention order.

- (6) Before determining whether to impose a condition imposing a period of home detention under this section, the Parole Authority is to obtain, and consider, a report prepared by a community corrections officer as to the suitability of the offender for home detention.

170B Circumstances for revocation in addition to non-compliance with parole order

- (1) The Parole Authority may make an order revoking a parole order after the release of the offender under the order or a re-integration home detention order:
 - (a) if it is satisfied that the offender poses a serious and immediate risk to the safety of the community and that the risk cannot be sufficiently mitigated by directions from a community corrections officer or by changing the conditions of parole, or
 - (b) if it is satisfied that there is a serious and immediate risk that the offender will leave New South Wales in contravention of the conditions of the parole order and that the risk cannot be sufficiently mitigated by directions from a community corrections officer or by changing the conditions of parole, or
 - (c) if it is satisfied that the offender has failed to comply with the offender's obligations under a re-integration home detention order, or
 - (d) if a re-integration home detention order applying to the offender is revoked, or
 - (e) in the case of an offender who has been granted parole on the grounds that he or she is in imminent danger of dying or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, as referred to in section 154A (3) (a), if it is satisfied that those grounds no longer exist, or
 - (f) in the case of an offender who has been granted parole under section 160 on the grounds that he or she is dying or because of exceptional extenuating circumstances, if it is satisfied that those grounds or circumstances no longer exist, or
 - (g) if the offender fails to appear before the Parole Authority when called on to do so under section 180, or
 - (h) if the offender has applied for the order to be revoked.
- (2) The Parole Authority may make a parole revocation order on its own initiative or

on the recommendation of the Commissioner or a community corrections officer.

Note—

Division 3A of Part 6 sets out additional circumstances relating to the safety of the community in which the parole of individuals may be revoked if there are terrorism concerns.

171 Parole revocation orders

- (1) A parole revocation order may be made:
 - (a) whether or not the offender has been called on to appear before the Parole Authority, and
 - (b) whether or not the Parole Authority has held an inquiry.
- (2) A parole revocation order takes effect, or is taken to have taken effect, on the date on which it is made or on any earlier date that the Parole Authority thinks fit.
- (3) The earliest date on which a parole revocation order resulting from a breach of the obligations of the offender under the parole order may take effect is the date of the first occasion on which it appears to the Parole Authority that the offender failed to comply with the offender's obligations under the parole order.
- (4) If an offender is not taken into custody until after the day on which the parole revocation order takes effect, the term of the offender's sentence is, by this subsection, extended by the number of days the person was at large after the order took effect.

[21] (Repealed)

[22] Section 173 Notice of revocation

Insert “, re-integration home detention order” before “or parole order” in section 173 (1).

[23] (Repealed)

[24] Section 175A Review not available in certain circumstances

Insert at the end of the section:

- (2) If a re-integration home detention order is revoked, the revocation notice referred to in section 173 is not required to comply with the requirements of section 173 (2) (b) or (c) and the offender is not entitled to seek a review under section 174.

[25] Section 179 Consequential revocation of other orders

Insert “, re-integration home detention order” before “or parole order” wherever occurring.

[26] Section 179 (1)

Insert “, re-integration home detention orders” before “or parole orders”.

[27] Section 181 Warrants committing offenders to correctional centres

Insert “, re-integration home detention order” before “or parole order” in section 181 (1) (a).

[28] Section 182 Functions may be exercised after order has expired

Insert “, re-integration home detention order” before “or parole order”.

[29] Section 185 Functions of Parole Authority

Insert after section 185 (1) (a):

(a1) to determine matters with respect to the granting of re-integration home detention orders and the conditions on which the orders are granted,

[30] Section 193 Information concerning offenders and correctional centres

Insert “under a re-integration home detention order or” before “on parole” in section 193 (1) (a).

[31] Section 193 (2) (b)

Insert “re-integration home detention order or” before “parole order”.

[32] Section 193C Parole Authority decisions

Insert “a re-integration home detention order or” before “parole” in section 193C (1) (a).

[33] Section 193C (1) (b)

Insert “, re-integration home detention order” before “or parole order”.

[34] Section 193C (1) (d) (ii)

Omit “section 170 (1)”. Insert instead “section 170 (3) or 170B (2)”.

[35] Section 193C (1) (e)

Insert after section 193C (1) (d):

(e) all decisions that result in a refusal to revoke a re-integration home detention order following a recommendation referred to in section 168E (2).

[36] Section 193C (2A)

Insert after section 193C (2):

(2A) In recording its reasons for a decision relating to re-integration home detention for the purposes of this section, the Parole Authority must address the matters that it is required to consider when making the decision.

[37] Section 236M Accommodation of offenders in residential facilities

Insert “a re-integration home detention order,” before “a parole order” in section 236M (5) (b).

[38]-[40] (Repealed)

[41] Section 260 Evidentiary certificates

Insert “, re-integration home detention order” before “or parole order” wherever occurring.

[42] (Repealed)

Schedule 2 Amendment of [Children \(Detention Centres\) Act 1987 No 57](#)

[1] Section 9A Certain persons not to be detained in detention centres

Omit “section 38” from section 9A (2) (g).

Insert instead “section 98”.

[2] Section 29 Application of Crimes (Administration of Sentences) Act 1999 to detainees

Omit the section.

[3] Part 4C

Insert after Part 4B:

Part 4C Parole of detainees

Division 1 Preliminary

38 Principles of Part

For the purposes of this Part, the Children’s Court or a person who has functions under this Part is to have regard to the following principles:

- (a) the principles set out in section 6 of the *Children (Criminal Proceedings) Act 1987*,
- (b) that the purpose of parole for children is to promote community safety, recognising that the rehabilitation and re-integration of children into the community may be highly relevant to that purpose.

39 Definitions

In this Part:

detention order includes a sentence of imprisonment.

juvenile offender means:

- (a) a person subject to control, or
- (b) a person who is serving a sentence of imprisonment and who was under the age of 18 years when the person committed the offence.

serious children's indictable offence has the same meaning as in the *Children (Criminal Proceedings) Act 1987*.

statutory parole order—see section 44.

40 Application of Part

- (1) This Part applies to a juvenile offender if the offender is under the age of 18 years when the offender first becomes eligible for parole or at any later time when the offender is considered for parole.
- (2) This Part ceases to apply to a juvenile offender when the juvenile offender reaches the age of 18 years.
- (3) Despite subsection (2), this Part continues to apply to a juvenile offender if:
 - (a) the offender reaches the age of 18 years while on parole and the birthday occurs during the last 12 weeks of the parole period, or
 - (b) the Secretary considers that it is appropriate that the offender, or a class of offenders of which the offender is a member, continue to be dealt with under this Part.
- (4) The provisions of the *Crimes (Administration of Sentences) Act 1999* in respect of parole apply to a juvenile offender if this Part does not apply to the offender.
- (5) For the purposes of subsection (4):
 - (a) a reference in the *Crimes (Administration of Sentences) Act 1999* to a correctional centre includes a reference to a detention centre, and

- (b) a reference in a parole order to a juvenile justice officer or supervision by an officer includes a reference to a community corrections officer or supervision by such an officer under that Act, and
- (c) a parole order made under this Part for an offender is taken to be a parole order made by the State Parole Authority.

41 Jurisdiction of Children's Court relating to parole

- (1) The Children's Court has jurisdiction to determine matters relating to parole, and conditions of parole, for juvenile offenders.
- (2) The jurisdiction of the Children's Court conferred by or under this Part is to be exercised by:
 - (a) the President of the Court, or
 - (b) a person appointed as a Children's Magistrate under section 7 of the *Children's Court Act 1987*.

42 Eligibility for release on parole

- (1) A juvenile offender may be released on parole in accordance with this Part.
- (2) A juvenile offender is eligible for release on parole only if:
 - (a) the offender is subject to at least 1 detention order for which a non-parole period has been set, and
 - (b) the offender has served the non-parole period of each such detention order and is not subject to any other detention order.
- (3) Nothing in this Part authorises the release of a juvenile offender who is required to be kept in custody in relation to an offence against a law of the Commonwealth.

43 Parole order necessary for release

A juvenile offender who is eligible for release on parole may not be released on parole except in accordance with a parole order directing the release of the offender.

Division 2 Making of parole orders

44 Statutory parole orders where detention order for period of 3 years or less

- (1) A juvenile offender who is subject to a detention order for a period of 3 years or less, being an order for which a non-parole period has been set, is taken to be subject to a parole order (a **statutory parole order**) directing the release of

the offender on parole at the end of the non-parole period.

- (2) A statutory parole order is conditional on the juvenile offender being eligible for release on parole in accordance with section 42 at the end of the non-parole period of the detention order.
- (3) If the juvenile offender is not eligible for release at that time, the offender is entitled to be released on parole as soon as the offender becomes so eligible.
- (4) This section does not authorise the release on parole of a juvenile offender who is also subject to a detention order for a period of more than 3 years for which a non-parole period has been set unless the offender is otherwise entitled to be released under this Division.

45 Parole orders where detention order for period of more than 3 years

- (1) At least 60 days before the parole eligibility date for a juvenile offender who is subject to a detention order for a period of more than 3 years, the Children's Court must consider whether the offender should be released on parole.
- (2) Despite subsection (1), the Children's Court may defer consideration of a juvenile offender's case until not less than 21 days before the offender's parole eligibility date if it is of the opinion that:
 - (a) it is unable to complete its consideration because it has not been furnished with a report required to be made to it, or
 - (b) there are other relevant matters requiring further consideration.

46 General duty of Children's Court relating to release of offenders

- (1) The Children's Court must not make a parole order directing the release of a juvenile offender unless it is satisfied that it is in the interests of the safety of the community.
- (2) In considering whether it is in the interests of the safety of the community to release a juvenile offender, the Children's Court must have regard to the following principal matters relating to the promotion of community safety, while recognising that the rehabilitation and re-integration of the offender into the community may be highly relevant to the promotion of community safety:
 - (a) the risk to the safety of members of the community of releasing the offender on parole,
 - (b) whether the release of the offender on parole is likely to address the risk of the offender re-offending,
 - (c) the risk to community safety of releasing the offender at the end of the

sentence without a period of supervised parole or at a later date with a shorter period of supervised parole.

- (3) In considering whether it is in the interests of the safety of the community to release a juvenile offender, the Children's Court must also have regard to the following matters:
- (a) the nature and circumstances of the offence to which the offender's sentence relates,
 - (b) any relevant comments made by the sentencing court,
 - (c) the offender's criminal history,
 - (d) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole,
 - (e) if applicable, whether the offender has failed to disclose the location of the remains of a victim,
 - (f) any report in relation to the granting of parole that has been prepared by or on behalf of the Department,
 - (g) any other report in relation to the granting of parole to the offender that has been prepared by or on behalf of any authority of the State,
 - (h) any other matters that the Children's Court considers to be relevant.
- (4) Without limiting subsection (3) (e) or (h), if the juvenile offender has provided post-sentence assistance, the Children's Court may have regard to the following:
- (a) the nature and extent of the assistance (including the reliability and value of any information or evidence provided by the offender),
 - (b) the degree to which the offender's willingness to provide assistance reflects the offender's progress to rehabilitation.
- (5) A report prepared by or on behalf of the Department for the purposes of subsection (3) must address the matters prescribed by the regulations for the purposes of this section.
- (6) The Children's Court is not required to consider the matters specified by this section in relation to a juvenile offender if it determines under Division 5 that it cannot make a parole order for the offender.
- (7) In this section:

post-sentence assistance means assistance in the prevention, detection or investigation of, or in proceedings relating to, any offence provided by a juvenile

offender to law enforcement authorities after the offender was sentenced and that was not taken into account or considered by the sentencing court.

47 Parole orders in exceptional circumstances

- (1) The Children's Court may make an order directing the release of a juvenile offender on parole who (but for this section) is not otherwise eligible for release on parole if the offender is dying or if the Court is satisfied that it is necessary to release the offender on parole because of exceptional extenuating circumstances.
- (2) Sections 44, 45 and 46 do not apply to a parole order under this section.

Division 3 Release under parole orders

48 Application of Division

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

49 Date of release on parole of serious offenders

- (1) In determining when a juvenile offender who has been convicted of an offence involving violence should be released, the Children's Court must take into account the potential trauma to a victim and the victim's family if the offender is released on the anniversary of the commission of the offence against the victim.
- (2) The following offences are **offences involving violence** for the purposes of this section:
 - (a) a prescribed sexual offence within the meaning of the *Criminal Procedure Act 1986*,
 - (b) an offence under sections 27–30 of the *Crimes Act 1900* (attempts to murder),
 - (c) an offence under section 33 of the *Crimes Act 1900* (wounding etc with intent to do grievous bodily harm or resist arrest),
 - (d) an offence under section 35 (1) or (2) of the *Crimes Act 1900* (infliction of grievous bodily harm),
 - (e) an offence under sections 86–91 of the *Crimes Act 1900* (abduction or kidnapping),
 - (f) an offence under sections 94–98 of the *Crimes Act 1900* (robbery),
 - (g) an offence the elements of which include the commission of, or an intention

to commit, an offence referred to in any of the above paragraphs,

- (h) an offence that, at the time it was committed, was an offence involving violence for the purposes of this section,
- (i) any other offence that involves an act of actual or threatened violence that is prescribed by the regulations for the purposes of this section.

50 Release under parole order

- (1) A juvenile offender's parole order is sufficient warrant for any person having custody of the offender to release the offender in accordance with the terms of the order.
- (2) A juvenile offender who is released on parole under this Part is to be released from custody on the day specified in the relevant parole order in that regard (the **parole date**).
- (3) A juvenile offender may be released from custody:
 - (a) at any time on the parole date, or
 - (b) if the parole date is a Saturday or Sunday and the offender so requests, at any time on the Friday preceding the Saturday or Sunday, if it is not a public holiday, or during the next day after the parole date that is not a Saturday, Sunday or public holiday, or
 - (c) if the parole date is a public holiday and the offender so requests, at any time on the day preceding the public holiday, if it is not a Saturday or Sunday or a public holiday, or during the next day after the parole date that is not a Saturday, Sunday or public holiday.

51 Sentence continues to run while juvenile offender on parole

A juvenile offender who, while subject to a detention order, is released on parole in accordance with the terms of a parole order is taken to be subject to the detention order during the period:

- (a) that begins when the offender is released, and
- (b) that ends when the detention order expires or (if the parole order is sooner revoked) when the parole order is revoked.

Division 4 Conditions and obligations of parole orders

52 Application of Division

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

53 Conditions of parole generally

- (1) A parole order is subject to the standard conditions imposed by this Part or the regulations.
- (2) The Children's Court may from time to time, by written notice given to the juvenile offender:
 - (a) impose additional conditions on a parole order, or
 - (b) vary or revoke any additional conditions imposed by it.
- (3) The conditions of a parole order for an offender subject to a detention order for a period of more than 3 years include conditions giving effect to a post-release report, prepared by the Department and adopted by the Children's Court (with or without changes), in relation to the juvenile offender.
- (4) In determining whether to impose a condition on, or vary or revoke a condition of, a parole order under this section or any other provision of this Act or the regulations, the Children's Court is to have regard to the following:
 - (a) whether the new condition, variation or revocation will assist in the management of a risk to community safety arising from the release of the juvenile offender on parole,
 - (b) the likely effect on any victim of the offender, and on any such victim's family, of the new condition, variation or revocation,
 - (c) whether the new condition, variation or revocation will assist in the management of risk of breaches of parole by the offender,
 - (d) whether the new condition, variation or revocation will assist in supporting participation by the offender in rehabilitation programs and managing re-integration into the community.
- (5) Nothing in this Parts permits the Children's Court:
 - (a) to revoke or vary any standard conditions imposed by this Part or the regulations, or
 - (b) to impose any additional conditions, or vary any additional conditions imposed by it, so as to be inconsistent with any standard conditions imposed by this Part or the regulations.

54 Conditions of parole as to non-association and place restriction

- (1) The conditions to which a parole order is subject may include either or both of the following:

- (a) provisions prohibiting or restricting the juvenile offender from associating with a specified person,
 - (b) provisions prohibiting or restricting the offender from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) is suspended:
- (a) while the juvenile offender is in lawful custody (otherwise than while unescorted by a juvenile justice officer or correctional officer), and
 - (b) while the offender is under the immediate supervision of a person employed in the Department.
- (3) A juvenile offender does not contravene a prohibition or restriction as to his or her association with a specified person:
- (a) if the offender does so in compliance with an order of a court, or
 - (b) if, having associated with the person unintentionally, the offender immediately terminates the association.
- (4) A juvenile offender does not contravene a requirement not to frequent or visit a specified place or district if the offender does so in compliance with an order of a court.
- (5) In this section, **associate with** means:
- (a) to be in company with, or
 - (b) to communicate with by any means (including by post, telephone, facsimile, email or other means of electronic communication).

55 Conditions as to supervision

- (1) It is a condition of a parole order that the juvenile offender is to be subject to supervision, as prescribed by the regulations.
- (2) The period of supervision is to be the period specified by or under the order or under the regulations, except as provided by subsection (3).
- (3) The period of supervision for a juvenile offender released under a parole order made under section 47 is the whole of the period for which the parole order is in force.
- (4) The condition imposed by subsection (1) does not apply to an offender in the circumstances (if any) prescribed by the regulations for the purposes of this subsection.

56 Children's Court may exempt from supervision condition in exceptional circumstances

- (1) The Children's Court may, by order in writing, exempt a juvenile offender for a specified period from the condition imposed by section 55 (1) if the Court is satisfied that the exceptional circumstances of the case justify the exemption.
- (2) The exemption may be unconditional or subject to conditions.
- (3) The order is to specify the purpose for which it is granted.
- (4) For the purposes of this Act, a failure to comply with a condition of the exemption is taken to be a failure to comply with the obligations of the parole order. This subsection does not limit the power of the Children's Court to revoke the exemption order.
- (5) A juvenile offender is not required to comply with the condition imposed under section 55 (1) if the offender is subject to an exemption.
- (6) The regulations may make provision for or with respect to the following:
 - (a) the periods for which an exemption may be ordered,
 - (b) notice to an offender of the making or revocation of an exemption order.

57 Suspension of certain parole conditions

- (1) This section applies to the following conditions of a parole order:
 - (a) a condition referred to in section 54 (1),
 - (b) a condition referred to in section 55 (1) (a **supervision condition**).
- (2) A juvenile justice officer may, by order in writing and subject to the regulations, suspend the application of a supervision condition to a juvenile offender for a period or periods or indefinitely.
- (3) A juvenile justice officer may, by order given orally or in writing and subject to the regulations, suspend the application of any other condition to which this section applies to a juvenile offender for a period or periods.
- (4) The suspension may be unconditional or subject to conditions.
- (5) For the purposes of this Act, a failure to comply with a condition of the suspension is taken to be a failure to comply with the obligations of the parole order. This subsection does not limit the power of the juvenile justice officer to revoke the suspension order.
- (6) The regulations may make provision for or with respect to the following:

- (a) the periods for which a condition may be suspended,
 - (b) notice to a juvenile offender of the making or revocation of a suspension order,
 - (c) requiring the power to make, amend or revoke a suspension order to be exercised subject to and in accordance with any specified conditions.
- (7) This section does not apply to a condition imposed on an offender released on parole under section 47.

Division 5 Parole orders for terrorism related offenders

58 Definitions

- (1) In this Division:

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*.

terrorism related offender means a juvenile offender to whom this Division applies.

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

- (2) A reference in this Division to a juvenile offender engaging in, or inciting or assisting others to engage in, terrorist acts or violent extremism includes a reference to an offender doing so in this State, in any other part of Australia or in any other country.

59 Juvenile offenders to whom Division applies

- (1) This Division applies to a juvenile offender:

- (a) who is subject to a detention order for a terrorism offence, who has previously been convicted of a terrorism offence or who has been charged with a terrorism offence, or
- (b) who is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code, or
- (c) who has any associations with a terrorist organisation (within the meaning of Division 102 of Part 5.3 of the Commonwealth Criminal Code), or
- (d) who has made statements or carried out activities advocating support for terrorist acts or violent extremism, or

(e) who has any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism.

- (2) This Division applies to a statutory parole order and any other parole order directing the release of a juvenile offender made by the Children's Court under this Part.

60 Limitation on release on parole of terrorism related offenders

- (1) The Children's Court must not make a parole order directing the release of a juvenile offender who is known to the Court to be a terrorism related offender unless:
- (a) the Court is satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts or violent extremism, and
 - (b) the offender is otherwise eligible under this Act to be released on parole.
- (2) The grounds on which the Children's Court may revoke the parole order of a juvenile offender who is known to the Court to be a terrorism related offender include that the Court has become aware that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism.
- (3) The grounds on which the Children's Court may suspend the parole order of a juvenile offender who is known to the Court to be a terrorism related offender include that the Court has become aware that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism.
- (4) A statutory parole order directing the release of a juvenile offender who is known to the court as a terrorism related offender may be revoked by the Children's Court in accordance with this section at any time before or after the release of the offender on parole.

61 General provisions relating to terrorism related offenders

- (1) In deciding whether or not to release a terrorism related offender on parole, the Children's Court is to:
- (a) have regard to any credible information it has on the risk that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism under the terms of the proposed parole order and in the future, and
 - (b) have regard in particular to whether the nature of any associations or affiliation that the offender has with any persons or groups advocating support for terrorist acts or violent extremism gives rise to any such risk.
- (2) The Children's Court may, for the purposes of this Division, have regard to

advice received from the NSW Police Force or from any other public authority (whether of this or any other State or Territory or of the Commonwealth) established for law enforcement, security or anti-terrorist purposes.

- (3) This Division applies in addition to, and despite anything to the contrary in, any other provision of or made under this Part.
- (4) However, this Division does not limit the operation of section 47.

Division 6 Revocation of parole orders and other sanctions

62 Application of Division

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

63 Revocation of parole before release

- (1) The Children's Court may make an order revoking a parole order at any time before the offender to whom the order relates is released under the order, if the Court is satisfied that:
 - (a) the offender, if released, would pose a serious identifiable risk to the safety of the community and the risk cannot be sufficiently mitigated by directions from a juvenile justice officer or by changing the conditions of parole, or
 - (b) the offender, if released, would pose a serious and immediate risk to the offender's safety and the risk cannot be sufficiently mitigated by directions from a juvenile justice officer or by changing the conditions of parole, or
 - (c) the offender has requested the revocation, or
 - (d) in the case of a parole order made by the Court, there has been a substantial change to a matter considered by the Court in making the order, or
 - (e) any other circumstance prescribed by the regulations for the purpose of this section exists.
- (2) The Children's Court may revoke a parole order under this section on its own initiative or on the recommendation of a juvenile justice officer.

Note—

Division 5 sets out additional circumstances relating to the safety of the community in which the parole of individuals may be revoked before or after release if there are terrorism concerns.

- (3) The Attorney General, the Minister or the Secretary may request the Children's Court to revoke a parole order under this section and may make any submissions they think fit to support the request.

64 Actions by Secretary on non-compliance

- (1) This section applies if the Secretary is satisfied that a juvenile offender has failed to comply with the offender's obligations under a parole order.
- (2) The Secretary may take any of the following actions:
 - (a) record the non-compliance and take no further action,
 - (b) give an informal warning to the juvenile offender.
- (3) As an alternative to taking any such action, the Secretary can decide to refer the failure to comply to the Children's Court because of the serious nature of the non-compliance and may also make a recommendation as to the action that the Court may take in respect of the juvenile offender.
- (4) In deciding whether and what action should be taken in respect of the juvenile offender's failure to comply with obligations under the parole order, the Secretary may have regard to any action previously taken in respect of the failure to comply or any earlier failures to comply with the order.

65 Actions by Children's Court on non-compliance

- (1) This section applies if the Children's Court is satisfied that a juvenile offender has failed to comply with the offender's obligations under a parole order.
- (2) The Children's Court may take any of the following actions:
 - (a) record the non-compliance and take no further action,
 - (b) give the juvenile offender a formal warning,
 - (c) impose additional conditions on the parole order,
 - (d) vary or revoke conditions of the parole order (other than conditions imposed by this Act or the regulations),
 - (e) make an order revoking the parole order.

Note—

The Children's Court may issue a notice requiring a juvenile offender to attend the Court for the purposes of this Part (see section 78 (1)).

66 Circumstances for revocation in addition to non-compliance

- (1) The Children's Court may make an order revoking a parole order at any time after the release of a juvenile offender:
 - (a) if it is satisfied that the offender poses a serious and immediate risk to the

safety of the community and that the risk cannot be sufficiently mitigated by directions from a juvenile justice officer or by changing the conditions of parole, or

- (b) if it is satisfied that there is a serious and immediate risk that the offender will leave New South Wales in contravention of the conditions of the parole order and that the risk cannot be sufficiently mitigated by directions from a juvenile justice officer or by changing the conditions of parole, or
- (c) in the case of an offender who has been granted parole under section 47 on the grounds that the offender is dying or because of exceptional extenuating circumstances, if it is satisfied that those grounds or circumstances no longer exist, or
- (d) if the offender fails to appear before the Children's Court when required to do so under this Part, or
- (e) if the offender has applied for the order to be revoked.

- (2) The Children's Court may make a parole revocation order on its own initiative or on the recommendation of the Secretary or a juvenile justice officer.

Note—

Division 5 sets out additional circumstances relating to the safety of the community in which the parole of individuals may be revoked if there are terrorism concerns.

67 Hearings as to non-compliance and revocation

- (1) The Children's Court may, at any time, hold a hearing into whether a juvenile offender has failed to comply with the offender's obligations under a parole order or whether there are other grounds to revoke the order.

Note—

Division 8 sets out procedures for hearings.

- (2) The Children's Court is not required to hold a hearing before it decides to revoke a parole order directing the release of a juvenile offender or to take any other action in relation to non-compliance with an order.
- (3) If the Children's Court revokes a parole order without holding a hearing, the Court is required to hold a hearing within 28 days of giving notice to the juvenile offender of the revocation.
- (4) If a hearing is held under subsection (3), the Children's Court may make any decision that it could make on a reconsideration application under section 74 (1).

68 Effect of revocation order

- (1) An order revoking a parole order takes effect, or is taken to have effect, on the day on which it is made or on any earlier day specified in the order.
- (2) The earliest day on which the revocation of a parole order on the grounds of non-compliance may be taken to have effect is the date of the last occasion on which there was a failure by the juvenile offender to comply with obligations under the parole order that constituted all or part of the grounds for the revocation.
- (3) If the juvenile offender is not taken into custody until after the day on which the order revoking the parole order takes effect, the term of the offender's detention order is, by this subsection, extended by the number of days the person was at large after the order took effect.

Note—

Division 7 sets out rights and procedures for reconsideration where a parole order is revoked.

69 Request by Attorney General, Minister, DPP to revoke parole order

The Attorney General, the Minister or the Director of Public Prosecutions may request the Children's Court to exercise its powers to revoke a parole order in relation to a juvenile offender who is serving a sentence of imprisonment for a serious children's indictable offence on the ground that the order has been made on the basis of false, misleading or irrelevant information.

70 Application to Supreme Court by juvenile offender

- (1) If:
 - (a) the Children's Court revokes a parole order, and
 - (b) the juvenile offender to whom the parole order relates alleges that the order has been revoked on the basis of false, misleading or irrelevant information,the offender may, in accordance with rules of court, apply to the Supreme Court for a direction to be given to the Children's Court as to whether the information was false, misleading or irrelevant.
- (2) The Supreme Court may give any directions with respect to the information that it thinks fit.
- (3) An application under this section is to be considered by the Supreme Court if and only if it is satisfied that the application is not an abuse of process and that there appears to be sufficient evidence to support the application.
- (4) This section does not give the Supreme Court jurisdiction to consider the merits

of the Children's Court's decision otherwise than on the grounds referred to in subsection (1).

- (5) At the hearing or determination of an application under this section, a juvenile offender is not entitled to appear in person, except by leave of the Supreme Court.

Division 7 Reconsideration of parole

71 Application of Division

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

72 Reconsideration options after refusal of parole

If the Children's Court refuses to make a parole order directing the release of a juvenile offender, the Court must specify one of the following:

- (a) a new date on which the offender will be eligible for parole,
- (b) a date for a hearing to reconsider whether or not the offender should be released on parole,
- (c) a date on or after which the offender may apply to the Court to be released on parole.

73 Reconsideration options after revocation of parole

- (1) If the Children's Court revokes a parole order, the Court must do one of the following:
- (a) specify a new date on which the offender will be eligible for parole,
 - (b) specify a date for a hearing to reconsider whether or not the offender should be released on parole,
 - (c) specify a date on or after which the offender may apply to the Court to be released on parole,
 - (d) defer determining any of the matters referred to in paragraph (a), (b) or (c) for a specified period (not being for more than 3 months).
- (2) The Children's Court may defer determining any of those matters on 1 or more occasions.

74 Application for reconsideration of parole decision or revocation

- (1) A juvenile offender may apply to the Children's Court for the granting of parole

after a decision to refuse or revoke, or to defer a decision about, parole:

- (a) on or after a day specified by the Court for the making of any such application by the offender, or
 - (b) at any time after the decision on the ground that:
 - (i) new information has become available that is relevant to the granting of parole or a condition of parole, or
 - (ii) the situation of the offender, or in relation to the granting of parole, has materially changed since the decision.
- (2) A juvenile offender may apply to the Children's Court for the reconsideration of a decision about the conditions of parole at any time after the decision on the ground that:
- (a) new information has become available that is relevant to the granting of parole or a condition of parole, or
 - (b) the situation of the offender, or in relation to the granting of parole, has materially changed since the decision.
- (3) An application under this section may be accompanied by written submissions in support of the application.
- (4) On an application being made, the Children's Court:
- (a) must set a date (occurring as soon as practicable) on which the hearing will be conducted, and
 - (b) must give notice to the juvenile offender of the date, time and place for the hearing.
- (5) The Children's Court may refuse to consider an application made under subsection (1) (b) or (2) if it considers the application to be frivolous, vexatious or to have no prospect of success.

75 Decisions on reconsideration

- (1) On the hearing of an application under section 74 (1), the Children's Court may:
- (a) defer the making of a decision as to whether or not the juvenile offender should be released on parole for a specified period (not being for more than 3 months), or
 - (b) confirm the decision being reconsidered, or
 - (c) make or reinstate a parole order for the juvenile offender.

- (2) On the hearing of an application under section 74 (2), the Children's Court may:
 - (a) confirm the decision being reconsidered, or
 - (b) vary or revoke the conditions of parole or impose new conditions of parole.
- (3) The Children's Court may defer making a decision as to a juvenile offender on 1 or more occasions.

76 Date of parole after reconsideration

The period specified for release in a parole order directing the release of a juvenile offender made after an application under this Division is to be:

- (a) if the order is made before the offender's parole eligibility date, a period that begins on or after the eligibility date and ends no later than 35 days after that date, or
- (b) if the order is made after the offender's parole eligibility date, a period that begins on the date on which the order is made and ends no later than 35 days after that date.

Division 8 Procedure at hearings

77 Hearings

- (1) The Children's Court may conduct hearings for the purposes of exercising its jurisdiction under this Part.
- (2) Hearings under this Part are to be held in accordance with section 10 of the *Children (Criminal Proceedings) Act 1987*, unless otherwise ordered by the Children's Court.

78 Power to require attendance of juvenile offenders and witnesses and production of documents

- (1) A Children's Magistrate may, at any time, by notice in writing given to a juvenile offender who has been released on parole require the offender to attend at a specified time and place for the purposes of this Part.
- (2) A Children's Magistrate may, by notice in writing given to a person, require the person on whom the notice is served:
 - (a) to appear before the Children's Court for the purpose of giving evidence in proceedings under this Part, or
 - (b) to produce to the Children's Court any document (including a document in the custody or under the control of the person and in the possession of or the property of the Crown) that is relevant to any proceedings of the

Children's Court under this Part,

at a time, date and place specified in the instrument.

- (3) A Children's Magistrate may require a person who appears before the Children's Court to be sworn for the purpose of giving evidence on oath and may administer an oath accordingly.
- (4) If a document is produced to the Children's Court, the Court may take possession of the document for any period that it considers necessary for the purposes of the proceedings before it.
- (5) This section does not require a person to produce to the Children's Court any document the production of which the Minister certifies in writing:
 - (a) may endanger an offender or any other person, or
 - (b) may otherwise be contrary to the public interest.

79 Submissions by juvenile offenders at hearings

- (1) At any hearing relating to a juvenile offender conducted by the Children's Court under this Part, the offender may make submissions to the Court as to whether or not the offender should be released on parole.
- (2) Submissions may be made orally or in writing and, if in writing, may be given to the Children's Court either before or at the hearing.

80 Rights of parties making submissions

Any person (including the State) who is entitled under this Part to make submissions at a hearing to the Children's Court may, at the hearing:

- (a) be represented by an Australian legal practitioner or, with the consent of the Court, by any other person, and
- (b) call and examine any witness who attends, including any witness called by the Court, and
- (c) produce documents and exhibits to the Court, and
- (d) give evidence on oath, and
- (e) otherwise adduce, orally or in writing, to the Court any matters, and address the Court on any matters, that are relevant to the proceedings before the Court.

81 Adjournments

The Children's Court may postpone or adjourn a hearing for any reason that seems

appropriate to it.

82 Warrants

- (1) A Children's Magistrate may issue a warrant for the arrest of a juvenile offender if:
 - (a) the offender fails to appear before the Children's Court after a notice has been issued to the offender under section 78, or
 - (b) the Court is of the opinion that the offender will not appear if given such a notice.
- (2) If the Children's Court revokes a parole order, a Children's Magistrate may issue a warrant committing the juvenile offender to a detention centre or correctional centre to serve the remainder of the detention order to which the order relates by way of full-time detention.
- (3) The Children's Court may, by order, recall or suspend any warrant that it has issued under this section.
- (4) A warrant for the arrest of a juvenile offender under this section is sufficient authority for any police officer to arrest, or to have custody of, the juvenile offender named in the warrant, to convey the offender to the place specified in the warrant and to deliver the offender into the custody of the Children's Court.
- (5) A warrant committing a juvenile offender to a detention centre or correctional centre under this section is sufficient authority:
 - (a) for any police officer to arrest, or to have custody of, the juvenile offender named in the warrant, to convey the offender to the place specified in the warrant and to deliver the offender into the custody of the person in charge of that place, and
 - (b) for the person in charge of that place to have custody of the offender named in the warrant for the remainder of the detention order to which the warrant relates.
- (6) The regulations may make provision for or with respect to the form of any warrants issued for the purposes of this section.

83 Witnesses' expenses

A person who is required to appear or give evidence before the Children's Court under this Part (other than a juvenile offender in respect of whom the proceedings are being held) is entitled to be paid any allowances and expenses that the Minister may determine in respect of the person.

Division 9 Prerogative of mercy

84 Governor may make parole order

- (1) The Governor may, in exercising the prerogative of mercy, make a parole order in respect of a juvenile offender.
- (2) The parole order may be made whether or not the juvenile offender is eligible for release on parole.
- (3) A juvenile offender may be released on parole in accordance with a parole order made by the Governor.
- (4) The following provisions of this Part (the ***applied provisions***) apply to a parole order made by the Governor in the same way as they apply to a parole order made by the Children's Court:
 - (a) Division 1 (other than sections 41 and 42),
 - (b) Divisions 3, 4, 6, 7, 8 and 10 (other than sections 92 and 93).
- (5) Except to the extent the Governor otherwise directs, the Children's Court is to exercise functions under the applied provisions as if the parole order were a parole order made by the Children's Court.
- (6) The Governor may revoke or vary a direction given to the Children's Court under this section.

Division 10 Miscellaneous

85 Application of Division

This Division applies to a statutory parole order and any parole order directing the release of a juvenile offender made by the Children's Court under this Part.

86 Submissions by State

- (1) The State may at any time make submissions to the Children's Court concerning the release on parole of a serious offender.
- (2) If the State makes any such submission before the Children's Court makes a final decision concerning the release of the offender, the Court must not make such a decision without taking the submission into account.
- (3) If the State makes any such submission after the Children's Court makes a final decision concerning the release of the offender, but before the offender is released, the Court must consider whether or not it should exercise its power under section 63 to revoke the relevant parole order.

- (4) The regulations may make provision for or with respect to submissions by the State under this section, including provisions relating to the application of this Part in connection with any such submission.
- (5) The powers of the State under this section may be exercised by the Secretary and by any other authority of the State.
- (6) In this section:
serious offender means a juvenile offender who belongs to a class of offenders prescribed by the regulations for the purposes of this section.

87 Submissions by Secretary

- (1) The Secretary may at any time make submissions to the Children's Court concerning the release on parole of a juvenile offender.
- (2) If the Secretary makes a submission before the Children's Court makes a final decision concerning the release of the juvenile offender, the Court must not make the decision without taking the submission into account.
- (3) The regulations may make provision for or with respect to submissions by the Secretary under this section.

88 Functions may be exercised after order has expired

The Children's Court may exercise any function under this Part in relation to a parole order, even if the order has expired.

89 Notice of parole decisions

- (1) The Children's Court must give notice to a juvenile offender of a decision under this Part relating to the grant or revocation of parole, including any decision relating to the conditions of parole.
- (2) The notice is to contain any matters that are prescribed by the regulations for the purposes of this section.

90 Parole order not invalidated by failure to comply with procedural requirements

A parole order is not invalid merely because of a failure by the Children's Court or another court to comply with any procedural requirement imposed by or under this Act.

91 Security of certain information

- (1) This section applies if a provision of this Part or the regulations (an ***information requirement***) requires a person to be provided with a copy of a report or

another document (or any part of the report or document) or information contained in a report or document.

- (2) A person is not required to comply with an information requirement to provide a copy of a report or other document if compliance with the requirement may, in the opinion of a Children's Magistrate:
- (a) adversely affect the security, discipline or good order of a detention centre or correctional centre, or
 - (b) endanger the person or any other person, or
 - (c) jeopardise the conduct of any lawful investigation, or
 - (d) prejudice the public interest, or
 - (e) adversely affect the supervision of any juvenile offender who has been released on parole.
- (3) A person is not required to comply with an information requirement to provide information about any part of the content of a report or other document if a copy of the report or document cannot be provided because of subsection (2) and, in the opinion of a Children's Magistrate:
- (a) not providing the information to the person is necessary in the public interest, and
 - (b) the public interest outweighs any right to procedural fairness that may be denied by not providing the information.
- (4) Subsection (2) does not permit the Minister to be denied access to any document held by the Children's Court.

92 Delegation of functions by Secretary

The Secretary may delegate any of the Secretary's functions under this Part, other than this power of delegation, to any of the following persons:

- (a) a juvenile justice officer,
- (b) a correctional officer,
- (c) any other person, or a member of a class of persons, prescribed by the regulations.

93 Recommendations to Secretary

- (1) The Children's Court may at any time make recommendations to the Secretary concerning the preparation of juvenile offenders for release on parole, either

generally or in relation to any particular offender or class of offenders.

- (2) The Secretary must have regard to, but is not bound by, any such recommendation in exercising functions.

94 Service of notices

- (1) Any notice required by or under this Part to be given to a person in respect of whom a parole order is in force, or any other person, may be given:
 - (a) personally, or
 - (b) by posting it, addressed to the person, to the address specified by the person for that purpose.
- (2) Any such notice may be served on a person in custody by giving the notice to the person in whose custody the person is held, and is to be dealt with in accordance with the regulations.
- (3) The means of giving a notice authorised by this section are in addition to any other means that are sufficient for valid service of the notice.

95 Records of decisions

- (1) The Children's Court must record its reasons for the following decisions:
 - (a) decisions that result in the granting or refusal of parole,
 - (b) decisions that result in the suspension or revocation of a parole order,
 - (c) decisions that result in the refusal to revoke a parole order following a submission by the State, the Attorney General, the Minister, the Director of Public Prosecutions or the Secretary under this Part or a recommendation by a juvenile justice officer.
- (2) In recording its reasons for a decision that a juvenile offender should or should not be released on parole, the Children's Court must address the matters required to be taken into account by it under this Part when making the decision.
- (3) Copies of any records made under this section are to be supplied to the Minister, the Secretary, the juvenile offender concerned and the Department on request.

96 Decision final

Subject to this Act, a decision by the Children's Court under this Part is final.

97 Regulations

The regulations may make provision for or with respect to the following matters:

- (a) the form, management, control, administration and supervision of parole orders,
- (b) the standard conditions to be imposed on parole orders,
- (c) the giving of notices to a juvenile offender,
- (d) the functions of juvenile justice officers under this Part,
- (e) the transfer of supervision of a person who has ceased to be a juvenile offender to whom this Part applies,
- (f) the notification of parole decisions by or on behalf of the Children's Court to persons other than juvenile offenders.

[4] Sections 38-45

Renumber the sections as sections 98-109.

[5] Schedule 1 Savings and transitional provisions

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

Part Provisions consequent on enactment of Parole Legislation Amendment Act 2017

Definitions

- (1) In this Part:

former parole provisions means the provisions of the *Crimes (Administration of Sentences) Act 1999*, as applied by section 29 of this Act before its repeal by the 2017 amending Act.

the 2017 amending Act means the *Parole Legislation Amendment Act 2017*.

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

General savings

- (1) Any act, matter or thing done or omitted to be done under any of the former parole provisions and having any force or effect immediately before the commencement of a provision of Part 4C of this Act that replaces that former parole provision is, on that commencement, taken to have been done or omitted to be done under the provision of Part 4C of this Act.
- (2) This clause does not apply:
- (a) to the extent that its application is inconsistent with any other provision of

- this Schedule or a provision of a regulation made under this Schedule, or
- (b) to the extent that its application would be inappropriate in a particular case.

Existing proceedings

The former parole provisions continue to apply to or in respect of the following proceedings, if commenced before the repeal of the former parole provisions:

- (a) any proceedings before any court relating to the revocation of parole or a breach of parole,
- (b) any proceedings before the Supreme Court relating to the granting of parole.

Terrorism matters

Division 5 of Part 4C, as inserted by the 2017 amending Act, extends to applications for parole orders pending on the commencement of that Division and to parole orders made before that commencement.

Existing parole orders for detention orders of 3 years or less

- (1) A parole order made by a court in respect of a detention order for a period of 3 years or less, and in force before the commencement of section 44 as inserted by the 2017 amending Act, is taken to be a statutory parole order.
- (2) A condition imposed by a court on any such parole order is, for the purposes of this Act, taken to have been imposed by the Children's Court.

Existing applications for parole

Section 46, as inserted by the 2017 amending Act, extends to the consideration of whether to make a parole order directing the release of a juvenile offender in any case in which the Children's Court was considering whether to make an order, but had not made a decision, before the commencement of that section.

Non-compliance with existing parole orders

- (1) The amendments made to this Act by the 2017 amending Act extend to non-compliance with the obligations of a parole order by a juvenile offender that occurred before the commencement of Division 6 of Part 4C of this Act and to parole orders for juvenile offenders in force immediately before that commencement.
- (2) However, subclause (1) does not apply to any non-compliance that was finally dealt with under the former parole provisions before that commencement.

Schedule 3 Amendment of other Acts consequential on amendments

to Crimes (Administration of Sentences) Act 1999

3.1 Crimes (Interstate Transfer of Community Based Sentences) Act 2004 No 72

Section 5 Definitions

Omit the definition of *parole order*. Insert instead:

parole order means an order in force under section 138, 141, 149, 150, 154A, 158 or 160 of the *Crimes (Administration of Sentences) Act 1999*.

3.2 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 50 Making of parole orders by court

Omit the section.

[2] Section 51 Conditions on parole orders

Omit the section.

[3] Section 51A Conditions of parole as to non-association and place restriction

Omit the section.

[4] Section 51B Certain information not to be published or broadcast

Omit the section.

3.3 Drug Court Act 1998 No 150

[1] Sections 7A (4), 7B (5) and 7C (5)

Omit “, 50, 51 and 51A” wherever occurring.

[2] Sections 18D (2) (a) and 18G (b)

Omit “parole order made under section 50 of the *Crimes (Sentencing Procedure) Act 1999*” wherever occurring.

Insert instead “statutory parole order under section 158 of the *Crimes (Administration of Sentences) Act 1999*”.

Schedule 4 Amendment of other Acts consequential on amendments

to Children (Detention Centres) Act 1987

4.1 Children (Criminal Proceedings) Act 1987 No 55

Section 15A Publishing and broadcasting of names prohibited

Insert after section 15A (6):

(6A) A reference in this Division to criminal proceedings includes a reference to a hearing under Part 4C of the *Children (Detention Centres) Act 1987*.

4.2 Children's Court Act 1987 No 53

Section 23 Rules

Insert “, Part 4C of the *Children (Detention Centres) Act 1987*” after “this Act” wherever occurring in section 23 (1).