

# Parole Legislation Amendment Act 2017 No 57

[2017-57]



New South Wales

## Status Information

### Currency of version

Repealed version for 27 February 2018 to 28 May 2018 (accessed 18 December 2024 at 21:25)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 29.5.2018.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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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### [1] (Repealed)

### [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]-[18] (Repealed)**

**[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], [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] (Repealed)**

**[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 2-4 (Repealed)**