

For comment - Draft Children (Detention Centres) Amendment (Warrants) Regulation 2022

	Amendment and description	Draft clause	Comments on draft – Legal Aid NSW, March 2022
1.	<p>Amend the form used for arrest warrants under Schedule 2 of the Children (Detention Centres) Regulation 2015 (CDC Regulation).</p> <p>Amendments to Form 2 aim to ensure consistency with s.82(1) of the CDC Act. Form 2 currently provides that the relevant parole order had been revoked, which is not a precondition for the issue of a warrant under s 82(1) (and later in the current form of the warrant it specifies that within 7 days a review should be undertaken to see if the ‘order’ should be revoked). Further, the current form of the warrant purports to allow options to be specified that are not lawfully available, such as allowing the police to return the young person to a detention centre to serve the portion of their unexpired term of detention. The form has been amended to address these inconsistencies.</p>	Schedule 1[1]	<p>Legal Aid NSW supports the amendments to Form 2 so that it is consistent with s 82(1) of the CDC Act.</p> <p>Section 82(1) allows an arrest warrant to be issued if:</p> <ol style="list-style-type: none"> 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. <p>In our experience, the current Form 2 is not consistent with s 82(1), it causes confusion and has been incorrectly used as a warrant of commitment rather than an arrest warrant.</p> <p>The arrest warrant is only to bring children before the Children’s Court</p> <p>We suggest amendments to the proposed Form 2. Where the form authorises police to arrest a juvenile offender:</p> <ul style="list-style-type: none"> *and to convey the juvenile offender to..... *and to deliver the juvenile offender into the custody of the Children’s Court <i>*delete if inapplicable</i> <p>we suggest deleting the first option (to convey the juvenile offender to a specified place) so that the only option is to deliver the juvenile offender into the custody of the Children’s Court. We recommend this amendment for the following reasons:</p> <ol style="list-style-type: none"> 1. The only purpose of the arrest warrant, as envisaged by s 82(1) and s 78 of the CDC Act, is to convey the juvenile offender to court to appear before the Children’s Court for a parole hearing. We note that ss 78 and 82 fall within Division 8 (Procedures at Hearings). 2. The arrest warrant should authorise the police to bring the juvenile offender before any Children’s Court without delay, where the child may make a bail application, pending the Children’s Court holding a hearing in its parole jurisdiction. Section 41(3) of the CDC Act was recently amended by the <i>Stronger Communities Legislation Amendment (Children) Act 2021</i> to ensure that bail decisions for proceedings related to a breach of parole can come before any Children’s Court Magistrate. 3. Where the warrant allows deletion of the option “to deliver the juvenile offender into the custody of the Children’s Court” it frustrates the above mentioned purpose of the arrest warrant.

4. Where the warrant is addressed to the centre managers of detention centres, there is the risk that the warrant may authorise the police to convey the juvenile offender to a specified place, being a detention centre. This is apt to continue the confusion and problems with the current Form 2, which is incorrectly used as a warrant of commitment rather than an arrest warrant. This confusion would be exacerbated where the second option of conveying the juvenile offender to the Children’s Court is deleted.
5. Further confusion might arise where two options remain available for police because neither are deleted. Where police convey a juvenile offender to a detention centre as specified in a warrant, the child may not be conveyed to appear before a Children’s Court too.

Thus, to ensure clarity and be consistent with s 82(1), we recommend that Form 2:

- be addressed only to the police and not to centre managers of detention centres
- only permit police to deliver juvenile offenders into the custody of the Children’s Court
- not refer to the warrant being sufficient authority to convey the juvenile offender to “a place specified in the warrant”.

Specified place

We note that various relevant provisions refer to the juvenile offender attending or being conveyed to a specified place.

Section 78(1) of the CDC Act provides that:

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*.

Section 78(2) allows a court to give a notice to require a witness to attend before a Children’s Court to give evidence in parole proceedings at a *specified date, time and place*.

These provisions allow for a notice to attend a specific court at a specific time. They do not relate to attendance at another specified place and certainly not a detention centre.

Moreover, the explicit purpose of section 82(1) is for an arrest warrant to secure attendance at a Children’ Court where a s 78 notice has not or will not succeed in ensuring a juvenile offender’s attendance. The section does not authorise the warrant to convey a juvenile offender to a detention centre.

We acknowledge that s 82(4) provides:

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

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			<p>custody of the Children’s Court</p> <p>Nevertheless, for the above mentioned reasons, we suggest that the warrant not allow for a place to be specified because:</p> <ul style="list-style-type: none"> • it may cause confusion if a detention centre is specified, and • a specific Children’s Court need not be specified given all Children’s Court may now deal with bail for parole matters. <p>Without impeding the amendments to Form 2, we suggest legislative amendments to s 78(1) and 82(4) of the CDC Act to clarify or delete the references to specified place.</p> <p>A parole hearing within 7 days</p> <p>We note that the current Form 2 authorises apprehension of the juvenile offender “for the purpose of conducting, within 7 days, an inquiry as to whether the order should be revoked”. This indicates an intention that a parole hearing be heard within 7 days of the execution of the warrant.</p> <p>We recommend a legislative amendment to the CDC Act requiring a parole hearing no later than 7 days after the execution of a warrant under s 82(1) or s 82(2) of the CDC Act. Children’s matters should be dealt with expeditiously, especially where a child is in custody. The Children’s Court sits in its parole jurisdiction each week and thus has the ability to hear a parole matter within 7 days. Although we acknowledge Youth Justice may not have relevant reports ready within 7 days, the court should nevertheless hear the matter and determine if a report and an adjournment is necessary.</p>

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	<p>Amend the form used for warrants of commitment under Schedule 2 of the CDC Regulation.</p> <p>Form 3 has been amended in response to concerns identified by the Children’s Court, to replace the phrase “found guilty” with “sentenced to a term of detention”, provide information relating to a young person’s sentence and parole period, provide that the Court may, in addition to rescinding a revocation, vary or rescind the date revocation took effect, and to simplify the form.</p>	<p>Schedule 1[2]</p>	<p>Legal Aid NSW supports the amendment of Form 3.</p> <p>Section 82(2) of the CDC Act provides that the court may issue a warrant of commitment to a detention centre or to a correctional centre. The current Form 3 provides for the warrant to specify a detention centre. It does not provide for commitment to a correctional centre.</p> <p>The proposed Form 3 allows for a warrant of commitment to a detention centre or a correctional centre: it is addressed to “all centre managers of detention centres and correctional centres in the State of NSW”. Insofar as the proposed Form 3 is also addressed to police, it provides authority to convey the juvenile offender “to the detention centre or correctional centre specified in the warrant”. However, the form does not provide for the warrant to specify the detention centre or correctional centre. Of concern, the form does not provide for the warrant to specify whether the court is committing the juvenile offender to a detention centre or to a correctional centre. This is apt to cause confusion amongst detention centres, correctional centres and police and may lead to juveniles being incorrectly detained in correctional centres rather than detention centres.</p> <p>Given the jurisdiction of the Children’s Court to hear the parole proceedings, most warrant of commitments would be to a detention centre rather than a correctional centre. Thus, we suggest that the form note that the warrant of commitment is to a detention centre unless the court specifies that it is to a correctional centre.</p> <p>For further clarity, we suggest that where the warrant commits a child to a correctional centre, it should specify the reasons why the child has been committed to a correctional centre rather than a detention centre.</p> <p>The proposed Form 3 also notes “The Court may reconsider the revocation of parole and rescind the revocation, vary or rescind the date on which the revocation took effect or make a further grant of parole”. Thus, the form envisages a parole hearing subsequent to the execution of the warrant of commitment. As outlined above, we suggest a legislative amendment to the CDC Act to provide that a parole hearing occurs no later than 7 days after the execution of the warrant of commitment, if the child has not already appeared at the parole hearing where the warrant was issued.</p>