

1996—No. 126

PRISONS ACT 1952—REGULATION

(Relating to the classification of prisoners)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Prisons Act 1952, has been pleased to make the Regulation set forth hereunder.

Bob Debus
Minister for Corrective Services.

Commencement

1. This Regulation commences on 15 April 1996.

Amendments

2. The Prisons (General) Regulation 1995 is amended:

(a) by inserting after clause 10 (6) the following subclause:

(7) This clause has effect subject to clause 11.

(b) by omitting clause 11 and by inserting instead the following clause:

Classification of escaped prisoners

11. (1) A prisoner who has committed an escape offence in New South Wales or elsewhere must, for the purposes of security and developmental programs, be classified by the Commissioner in one of the following categories:

Category E1. Those who, in the opinion of the Commissioner, represent a special risk to security and should at all times be confined in a prison specified by the Minister as being a high security prison for the purposes of this category.

Category E2. Those who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier in a prison specified by the Minister for the purposes of this category.

(2) A prisoner classified in Category E1 or E2 in accordance with this clause must not be reclassified so as to be taken out of that pair of categories except on the recommendation of the Review Council.

(3) The Review Council is not to make a recommendation for the purposes of this clause unless it is satisfied that:

- (a) there are special circumstances that, in the opinion of the Review Council, justify the reclassification, and
- (b) a significant rehabilitation purpose would be achieved by approving the prisoner's progression to Category C1, C2 or C3.

(4) The Review Council need not entertain any application made to it for the purposes of this clause if, on the face of the application and any document submitted in support of it, it appears to the Council that the application:

- (a) is not substantially different from a previous application made by or on behalf of the same prisoner and which the Council has rejected, or
- (b) is frivolous or vexatious or otherwise amounts to an abuse of process.

(5) For the purposes of this clause, a person has committed an escape offence if the person:

- (a) has been convicted of escaping, or of attempting or conspiring to escape, from lawful custody, or
- (b) has been found by a court to have committed any such offence, or
- (c) has admitted to such an offence for the purposes of section 21 (2) of the Criminal Procedure Act 1986 (or for the purposes of a similar provision in force in a jurisdiction other than New South Wales, in the case of a similar offence committed in that jurisdiction).

(6) This clause does not apply to a prisoner who was under the age of 18 years when the escape offence was committed.

(7) The provisions of clause 11 (1), (2) and (3) of this Regulation, as in force immediately before 15 April 1996, continue in force in relation to offences committed before that date.

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(8) Nothing in this clause requires the classification of any prisoner in Category E1 or E2 as a consequence of an escape offence committed before 15 April 1996.

(c) by omitting from clause 186 (a) the words “any function with respect to recommending” and by inserting instead the words “any function conferred by clause 11, and any other function relating to”.

EXPLANATORY NOTE

Clause 11 of the Prisons (General) Regulation 1995 currently requires prisoners who have been convicted of escaping or attempting to escape from lawful custody to be classified, for security purposes, as prisoners requiring maximum or medium security confinement. Under the clause as now in force, a prisoner with such a conviction cannot be reclassified to a minimum security classification. The object of this Regulation is to repeal and replace clause 11:

(a) so that the requirements of the clause will extend to apply to:

- (i) prisoners escaping from lawful custody who, although not convicted of the offence; are found by a court to have committed it or admit the offence before a court in certain circumstances, and
- (ii) prisoners who are convicted of the offence of attempting to escape or of taking part in a conspiracy to escape from lawful custody, or whose offence is the subject of a finding or admission as referred to above, and

(b) to allow prisoners who have been classified, under the clause, as requiring maximum or medium security confinement to be reclassified into a minimum security category on the recommendation of the Serious Offenders Review Council, and

(c) to make it clear that the functions of the Review Council under the new clause, including its power to refuse to entertain certain applications, may be delegated to a committee of the Council.

The Review Council is not permitted to recommend reclassification of a prisoner to a minimum security category unless it is satisfied that there are special circumstances that justify the reclassification and that there is a significant rehabilitation purpose to be achieved by the reclassification.

The Regulation is made under sections 15 and 50 (1) (c) of the Prisons Act 1952, which deal with the separation of prisoners, and section 62 (g) of that Act, which permits functions to be conferred on the Serious Offenders Review Council in relation to the management of prisoners.
