



New South Wales

Crimes (Administration of Sentences) Amendment Regulation 2001

under the

Crimes (Administration of Sentences) Act 1999

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Crimes (Administration of Sentences) Act 1999*.

JOHN WATKINS, M.P.,

Minister for Corrective Services

Explanatory note

The object of this Regulation is to amend:

- (a) the *Crimes (Administration of Sentences) (Correctional Centre Administration) Regulation 1995*, and
- (b) the *Crimes (Administration of Sentences) (Periodic Detention, Home Detention, Community Service Work and Parole) Regulation 1995*, and
- (c) the *Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995*,

as a consequence of the enactment of the *Crimes (Administration of Sentences) Amendment Act 2000*, and for other reasons, as explained below.

Schedules 1 [1]–[3] and 3 [1] to this Regulation omit a number of provisions from the *Crimes (Administration of Sentences) (Correctional Centre Administration) Regulation 1995* and the *Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995* relating to the operation of the Corrections Health Service. Provisions to the same effect are now contained in the *Crimes (Administration of Sentences) Act 1999*.

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Explanatory note

Schedule 1 [5] to this Regulation prescribes the Compensation Court of New South Wales and the Administrative Decisions Tribunal as bodies that may require an inmate to be brought before them.

Schedules 1 [4] and 3 [2] to this Regulation insert new provisions into the *Crimes (Administration of Sentences) (Correctional Centre Administration) Regulation 1995* and the *Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995* to provide that:

- (a) a correctional officer may be required to submit the officer's motor vehicle to a search if the vehicle is within a correctional centre or correctional complex, and
- (b) a visitor to a correctional centre or correctional complex may be required to submit the visitor's motor vehicle to a search if the vehicle is within a correctional centre or correctional complex.

Schedule 2 to this Regulation amends the *Crimes (Administration of Sentences) (Periodic Detention, Home Detention, Community Service Work and Parole) Regulation 1995*:

- (a) to prescribe the method of supervision of offenders who have been released by the Parole Board under section 165 (3) (b) of the *Crimes (Administration of Sentences) Act 1999* pending a decision by the Board whether or not to make a home detention order, and
- (b) to prescribe the form of withdrawal of consent by a co-resident to the continued operation of a home detention order.

Schedule 3 [3], [4] and [6] to this Regulation amend clauses 168 and 175 of the *Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995* to create new offences, namely:

- (a) the offence of failing a urine test (for drugs) (clause 168 (1) (d)), and
- (b) the offence of refusing or failing to provide a urine sample for testing purposes in accordance with clause 175 (clause 175 (5)),

and to provide for defences, in relation to the offences prescribed by clause 168, that appropriately reflect the provisions of section 57 of the Act. **Schedule 3 [7]–[10]** to this Regulation amend Schedule 3 to that Regulation to prescribe the new offences as correctional centre offences (which may be dealt with in a summary manner by the governor of a correctional centre or a Visiting Justice) and to make minor law revision amendments. **Schedule 3 [5]** makes a law revision amendment to clause 174 to make it clear that section 57 of the Act applies to that clause.

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Explanatory note

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 51, 79, 165, 167 and 271.

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Clause 1 Crimes (Administration of Sentences) Amendment Regulation 2001

Crimes (Administration of Sentences) Amendment Regulation 2001

1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) Amendment Regulation 2001*.

2 Commencement

This Regulation commences on 16 February 2001.

3 Amendment of Crimes (Administration of Sentences) (Correctional Centre Administration) Regulation 1995

The *Crimes (Administration of Sentences) (Correctional Centre Administration) Regulation 1995* is amended as set out in Schedule 1.

4 Amendment of Crimes (Administration of Sentences) (Periodic Detention, Home Detention, Community Service Work and Parole) Regulation 1995

The *Crimes (Administration of Sentences) (Periodic Detention, Home Detention, Community Service Work and Parole) Regulation 1995* is amended as set out in Schedule 2.

5 Amendment of Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995

The *Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995* is amended as set out in Schedule 3.

6 Notes

The explanatory note does not form part of this Regulation.

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Amendment of Crimes (Administration of Sentences) (Correctional Centre Administration) Regulation 1995

Schedule 1

Schedule 1 Amendment of Crimes (Administration of Sentences) (Correctional Centre Administration) Regulation 1995

(Clause 3)

[1] Clause 3 Definitions

Omit the definition of *Chief Executive, Corrections Health Service* and the definitions of *Corrections Health Service* and *medical officer*.

[2] Part 3, heading

Omit the heading to Part 3. Insert instead:

Part 3 Health care at correctional centres

[3] Clauses 8A and 9

Omit the clauses.

[4] Clause 27A

Insert after clause 27:

27A Searching of officers' vehicles

The governor of a correctional centre or an officer of the Security and Investigations Branch may require an officer to make available for inspection and search any vehicle under the officer's control that is on the premises of a correctional centre or correctional complex.

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Schedule 1

Amendment of Crimes (Administration of Sentences) (Correctional Centre Administration) Regulation 1995

[5] Clause 56BA

Insert after clause 56B:

56BA Attendance at courts or tribunals

For the purposes of the definition of *court* in section 77 (5) of the Act, the Compensation Court of New South Wales and the Administrative Decisions Tribunal are prescribed.

Schedule 2 Amendment of Crimes (Administration of Sentences) (Periodic Detention, Home Detention, Community Service Work and Parole) Regulation 1995

(Clause 4)

[1] Clauses 80A and 80B

Insert after the heading to Part 6:

80A Supervision during home detention assessment: section 165

- (1) This clause applies where the Parole Board has released an offender under section 165 (3) (b) of the Act pending a decision whether or not to make a home detention order.
- (2) The prescribed supervision, for the purposes of section 165 (3) (b) of the Act, is the supervision of a probation and parole officer, with the following supervision conditions:
 - (a) the offender is to be of good behaviour and not commit any new offence,
 - (b) the offender is to permit visits by the officer to the offender's proposed place of residence at such times as the officer considers necessary,
 - (c) the offender is to submit to breath testing and urinalysis for detecting of drug use as and when directed by the officer,
 - (d) the offender is to authorise the following persons to provide information about him or her to the officer:
 - (i) any of the offender's medical practitioners,
 - (ii) the offender's therapist (if any),
 - (iii) the offender's counsellor (if any),
 - (e) the offender is to obey all reasonable directions of the officer.

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Schedule 2

Amendment of Crimes (Administration of Sentences) (Periodic Detention, Home Detention, Community Service Work and Parole) Regulation 1995

80B Withdrawal of consent to operation of home detention order: section 167

For the purposes of section 167 (1) (d) of the Act, the prescribed form of withdrawal of consent is as set out in Form 5A.

[2] Schedule 1 Forms

Insert after Form 5:

Form 5A

(Clause 80B)

Withdrawal of consent of co-resident to continued operation of home detention order

(Crimes (Administration of Sentences) Act 1999, section 167 (1) (d))

I, , withdraw my consent as co-resident to the continued operation of the home detention order of

Signature:

Date:

Schedule 3 Amendment of Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995

(Clause 5)

[1] Clause 3 Definitions

Omit the definition of *Chief Executive, Corrections Health Service* and the definitions of *Corrections Health Service* and *medical officer*.

[2] Clause 103A

Insert after clause 103:

103A Searching of visitors' vehicles

- (1) The governor of a correctional centre, an authorised correctional officer or the principal security officer may require a visitor to a correctional centre or to an inmate to make available for inspection and search any vehicle under the visitor's control that is on the premises of the correctional centre or correctional complex.
- (2) The governor of a correctional centre, an authorised correctional officer or principal security officer may refuse to allow the visitor to proceed with the visit, if the visitor refuses to submit to the inspection or search required under this clause.

Note. Under clause 114 of this Regulation the Commissioner may direct, in writing, that a person specified in the direction be prevented:

- (a) from entering every correctional centre or correctional complex in the State, and
- (b) from visiting any or all inmates at every such correctional centre or correctional complex,

if the Commissioner is satisfied that the security, discipline or good order of any one or more correctional centres or correctional complexes would be adversely affected if the person were to be permitted to visit them.

- (3) If a visitor is prevented from proceeding with a visit, the governor or officer concerned must cause details of the refusal of the visit and the reasons to be recorded and reported to the Commissioner.

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Schedule 3

Amendment of Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995

[3] Clause 168 Use of drugs

Insert at the end of clause 168 (1) (c):

- , or
- (d) if the result of a urine test carried out in accordance with directions given by the governor of a correctional centre or a correctional officer of or above the rank of Assistant Superintendent:
 - (i) shows the presence of a drug in the inmate's urine, and
 - (ii) indicates that the drug was administered to the inmate (whether by the inmate or by another person) while the inmate was an inmate.

[4] Clause 168 (2)

Omit the subclause. Insert instead:

- (2) An inmate does not contravene this clause:
 - (a) by reason of subclause (1) (a), if the drug was lawfully supplied to the inmate by a registered medical practitioner, registered dentist or registered nurse, or
 - (b) by reason of subclause (1) (b), (c) or (d), if the drug was:
 - (i) administered on and in accordance with the prescription of a registered medical practitioner or registered dentist, or
 - (ii) lawfully supplied by, and taken in accordance with the directions of, a registered medical practitioner, registered dentist or registered nurse, or
 - (c) by reason of subclause (3), if the implement was in the possession of the inmate for the purposes of:
 - (i) the administration of a drug on and in accordance with the prescription of a registered medical practitioner or registered dentist, or
 - (ii) taking a drug lawfully supplied by a registered medical practitioner, registered dentist or registered nurse.

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Schedule 3

[5] Clause 174 Urine sample where drug use suspected

Insert “of or above the rank of Assistant Superintendent” before “with the approval” in clause 174 (1).

[6] Clause 175 Urine sample whether or not drug use suspected

Insert after clause 175 (4):

- (5) An inmate must not refuse or fail to comply with a reasonable requirement or direction made or given under this clause.

[7] Schedule 3

Omit “**and minor correctional centre offences**” from the heading.

[8] Schedule 3, Part 1

Omit the matter relating to clause 168 (1). Insert instead:

168 (1) (a)–(c) Possession or use of drugs

[9] Schedule 3, Part 2

Insert before the matter relating to clause 168 (3):

168 (1) (d) Urine test shows presence of drugs

[10] Schedule 3, Part 2

Omit the matter relating to clause 174 (2). Insert instead:

174 (2) Refusing or failing to provide urine sample

175 (5) Refusing or failing to provide urine sample