



Crimes (Administration of Sentences) Amendment (Miscellaneous) Regulation 2004

under the

Crimes (Administration of Sentences) Act 1999

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

JOHN HATZISTERGOS, M.L.C.,

Minister for Justice

Explanatory note

The object of this Regulation is to amend the *Crimes (Administration of Sentences) Regulation 2001* so as:

- (a) to enable regard to be had, in preparing an inmate's case plan, to the inmate's criminal history (rather than just the inmate's criminal record), and
- (b) to provide for expeditious review of decisions of the Commissioner with respect to the transfer of inmates who are serious offenders or who have a high security or extreme high security designation, and
- (c) to clarify the services and programs available to inmates, and
- (d) to revert to the terms "accredited chaplain", "minister of religion" and "chapel" from "accredited spiritual advisor", "spiritual advisor" and "sacred space", and
- (e) to provide for new conditions, and to clarify existing conditions, that may be attached to visits to inmates, and
- (f) to make the possession by inmates of cameras, video or audio recording equipment and offensive weapons or instruments correctional centre offences, and
- (g) to declare contraventions by inmates of relevant provisions of the Act, or of any orders made under such provisions, as correctional centre offences, and
- (h) to give to the Parole Board the power to impose on a serious offender who is on release on parole a further period of supervision of up to 3 years, and

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- (i) to include the Refugee Review Tribunal of the Commonwealth in the definition of *court* for the purposes of attendance by inmates under section 77 of the *Crimes (Administration of Sentences) Act 1999*, and
- (j) to enable the Commissioner of Corrective Services to exercise the functions that are given by the Regulation to any officer of the Department of Corrective Services, and
- (k) to provide for the seizure, forfeiture and disposal of property brought into correctional centres in contravention of legislation, and
- (l) to allow, with the concurrence of the governor of a correctional centre, the use of security belts, batons, chemical aids and firearms by correctional officers for the purpose of restraining inmates, and
- (m) to clarify the scope of the declaration that correctional officers and Departmental officers are required to give about their associations with certain offenders, and
- (n) to make consequential and other minor amendments.

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 51, 77, 79 and 271 (the general regulation-making power).

Crimes (Administration of Sentences) Amendment (Miscellaneous) Regulation 2004

under the

Crimes (Administration of Sentences) Act 1999

1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) Amendment (Miscellaneous) Regulation 2004*.

2 Amendment of Crimes (Administration of Sentences) Regulation 2001

The *Crimes (Administration of Sentences) Regulation 2001* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Clause 13 Contents of case plan

Omit “record” from clause 13 (3) (d). Insert instead “history”.

[2] Clause 20 Decision by Commissioner as to inmate’s placement

Insert after clause 20 (2):

- (3) If the Commissioner is of the opinion that there are urgent reasons for doing so, the Commissioner may make a decision with respect to the transfer of an inmate who is a serious offender or an inmate who has a high security or extreme high security designation without giving the Review Council an opportunity to make submissions.
- (4) The Commissioner must notify the Review Council of any decision made under subclause (3).
- (5) After considering the report prepared by the governor, the Review Council may recommend to the Commissioner that the Commissioner reconsider a decision made under subclause (3).

[3] Clause 35 Information concerning review of extension directions

Omit the clause.

[4] Clause 45

Omit the clause. Insert instead:

45 Creation or possession of prohibited goods

An inmate must not create, or have in his or her possession, prohibited goods.

Note. Failure by an inmate to comply with the requirements of this clause is a correctional centre offence.

[5] Clause 60 Inmate services and programs

Omit clause 60 (1). Insert instead:

- (1) The Commissioner may provide an inmate with services and programs that:

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- (a) offer the inmate an opportunity to develop skills, behaviours and attitudes that lessen the likelihood of the inmate re-offending, or
 - (b) contribute to the inmate living in society after release from custody, or
 - (c) promote the health, safety and well-being of the inmate.

[6] Clause 60 (2) (h)

Insert after clause 60 (2) (g):

- (h) sports and recreational activities.

[7] Clause 60 (3) and (3A)

Omit clause 60 (3). Insert instead:

- (3) In the exercise of a function under this clause, the Commissioner must give special attention to the needs of inmates who have low literacy or numeracy.
- (3A) The Commissioner must also give special attention to the needs of inmates who have a disability.

[8] Clause 62 Accreditation of chaplains

Omit clause 62 (1). Insert instead:

- (1) A minister of religion may not perform the functions of a chaplain in a correctional centre unless the minister:
 - (a) is accredited by the Commissioner in accordance with subclause (1A), and
 - (b) is permitted by the appropriate authority for the religious organisation of which the minister is a member to work as a chaplain in the correctional centre.
- (1A) The Commissioner may, by instrument in writing, accredit a minister of religion who has been endorsed by the Civil Chaplaincies Advisory Committee to work as a full-time, part-time or sessional chaplain to inmates, correctional officers and Departmental officers at a correctional centre.
- (1B) The Commissioner must not accredit a minister of religion unless the minister has undergone a criminal record check and been found by the Commissioner to be suitable to work as a chaplain in the centre.

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[9] Clauses 62 (3)

Insert after clause 62 (2):

- (3) The Commissioner must give to the Civil Chaplaincies Advisory Committee written notice of any revocation.

[10] Clause 63 Privileges of accredited chaplains

Omit “spiritual advisors or lay persons who are wholly or partly engaged in duties of a spiritual nature” from clause 63 (1) (a).

Insert instead “ministers of religion or lay persons who are wholly or partly engaged in duties of a religious nature”.

[11] Clauses 63, 64 (1), 65, 66 (1), 68 (2), 69 and 72 (2)

Omit “accredited spiritual advisor” wherever occurring.

Insert instead “accredited chaplain”.

[12] Clauses 63 (1) (c), 64 (2) (b), 66 (2), (4) and (5) and 71

Omit “spiritual advisor” wherever occurring.

Insert instead “minister of religion”.

[13] Clause 64 Responsibilities of accredited chaplains

Omit “inmates” in clause 64 (1).

Insert instead “inmates, correctional officers and Departmental officers”.

[14] Clauses 64 (2), 65 (1) (a) and (2) and 66 (1) (b)

Omit “accredited spiritual advisor’s” wherever occurring.

Insert instead “accredited chaplain’s”.

[15] Clause 64 (2) (a)

Insert “injured,” after “sick,”.

[16] Clause 65 Powers of accredited chaplains

Omit “spiritual observance” from clause 65 (1).

Insert instead “religious observance”.

[17] Clauses 65 (1) (b) and 67 (1) (b)

Omit “spiritual advisors” wherever occurring.

Insert instead “ministers of religion”.

[18] Clause 65 (3)

Insert “, and of their families” after “is accredited”.

[19] Clause 66 Access to inmates

Omit “spiritual ministrations” from clause 66 (1) (b).

Insert instead “religious ministrations”.

[20] Clause 66 (3) and (3A)

Omit clause 66 (3). Insert instead:

(3) On request by an inmate belonging to a denomination for which no minister of religion has been accredited, the governor (after consultation with accredited chaplains) may arrange for the inmate to be visited by a minister of religion of that denomination.

(3A) A decision by the governor to grant a request under subclause (3) does not affect the number of visits and maximum number of visitors to which the inmate may be entitled under clauses 75 and 76.

[21] Clause 67 Participation of inmates in religious observances

Omit “Spiritual books, recognised objects of spiritual” from clause 67 (2).

Insert instead “Religious books, recognised objects of religious”.

[22] Clause 68 Use of chapels

Omit “sacred space” wherever occurring.

Insert instead “correctional centre chapel”.

[23] Clause 68 (1)

Insert “that are in keeping with the nature of the building,” after “purposes”.

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[24] Clauses 68 (1) and 70

Omit “accredited spiritual advisors” wherever occurring.

Insert instead “accredited chaplains”.

[25] Clause 68 (2A)

Insert after clause 68 (2):

- (2A) The governor of a correctional centre is to encourage inmates to use the correctional centre chapel for personal devotion, worship and meditation.

[26] Clauses 68 (3), 86 (1) and 137 (3) (b) (ii)

Omit “spiritual” wherever occurring.

Insert instead “religious”.

[27] Clause 68 (4)

Insert after clause 68 (3):

- (4) A correctional officer or Departmental officer must not damage any books or other objects used in connection with the rites, services and assemblies of a religious denomination, otherwise than in circumstances where the damage is:
- (a) unavoidable, and
 - (b) in the course of a search or of carrying out the officer’s duties.

[28] Clause 70 Accredited chaplaincy services generally

Omit “spiritual authorities” wherever occurring.

Insert instead “religious authorities”.

[29] Clause 70

Omit “spiritual advisory” wherever occurring.

Insert instead “chaplaincy”.

[30] Clause 72 Inmates' religious affiliation

Omit clause 72 (4). Insert instead:

- (4) If asked to do so by an accredited chaplain, the governor must inform the chaplain of the names of all inmates at the correctional centre who are for the time being shown in the relevant records as belonging to the chaplain's denomination.

[31] Clauses 93 (1) (a) and 240 (a)

Omit "drug detector" wherever occurring.

[32] Clause 98 Prevention of physical contact with inmates

Omit "may, either before or during a visit, direct that the visit is to be or to continue as" from clause 98 (2).

Insert instead "may direct that a visit is to be, or is to continue as,".

[33] Clause 98 (3)

Insert after clause 98 (2):

- (3) A direction under this clause has effect for such period as it may specify or, if no such period is specified, from the time it is given until it is revoked by a further direction.

[34] Clause 101 Termination of visits

Omit "obscene or abusive" from clause 101 (1) (b).

Insert instead "obscene, abusive".

[35] Clause 101 (1) (d)

Insert at the end of clause 101 (1) (c):

, or

- (d) that it is in the interests of the visitor, being a visitor who is under the age of 18 years, to terminate the visit.

Note. For example, the Commissioner may terminate a visit by a child who is visiting an inmate convicted of a sexual offence if the Commissioner is of the opinion that it is necessary for the protection of the child.

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[36] Clause 105 Commissioner may bar persons from visiting correctional centres

Insert after clause 105 (1):

- (1A) The Commissioner may direct that a person who is under the age of 18 years is to be prevented from visiting an inmate at any centre, if the Commissioner is of the opinion that it is in the interest of the person that the direction be given.

Note. For example, the Commissioner may direct that a child be prevented from visiting an inmate convicted of a sexual offence if the Commissioner is of the opinion that it is necessary for the protection of the child.

[37] Clause 105 (4) and (5)

Insert after clause 105 (3):

- (4) Permission given under subclause (3) may be given subject to any condition that the Commissioner considers appropriate.
- (5) Without limiting subclause (4), the Commissioner may impose the following conditions:
- (a) that the visit be a non-contact visit,
 - (b) that, in the case of a visit by a child, the child be accompanied by an approved adult for the duration of the visit.

[38] Clause 113A

Insert after clause 113:

113A Possession of cameras, video or audio recorders

An inmate must not have a camera, or video or audio recording equipment, or a charger for any such equipment, in his or her possession.

Note. Failure by an inmate to comply with the requirements of this clause is a correctional centre offence.

[39] Clause 115A

Insert after clause 115:

115A Property brought into correctional centre illegally

- (1) Any property brought into a correctional centre in contravention of the Act, this Regulation or any other law may be confiscated by the governor of the correctional centre.
- (2) Property that is confiscated under this clause becomes the property of the State, to be disposed of as the Commissioner may direct.

Note. Section 75 of the Act provides that the Commissioner may confiscate any property (including any money) that is unlawfully in the possession of an inmate. Property that is confiscated under the section becomes the property of the State, to be disposed of as the Commissioner may direct.

[40] Clause 116

Omit the clause. Insert instead:

116 Definition of “correctional centre offence”

A contravention by an inmate (whether by act or omission) of any of the following is declared to be a correctional centre offence for the purposes of Division 6 of Part 2 of the Act:

- (a) a provision of the Act,
- (b) an order or direction made under a provision of the Act,
- (c) a provision of this Regulation specified in Part 1 or 2 of Schedule 2.

[41] Clause 122 Use of equipment for restraining inmates

Insert “, security belts, batons, chemical aids and firearms” after “handcuffs” in clause 122 (1).

[42] Clause 122 (2) (a)

Omit “security belts, batons, chemical aids and firearms,”.

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[43] Clause 126A

Insert after clause 126:

126A Possession of offensive weapon or instrument

- (1) An inmate must not have an offensive weapon or instrument in his or her possession.

Note. Failure by an inmate to comply with the requirements of this clause is a correctional centre offence.

- (2) In this clause:

offensive weapon or instrument has the same meaning as it has in section 4 (1) of the *Crimes Act 1900*.

[44] Clause 148 Urine sample where drug use suspected

Insert “holding office or acting in a rank that is” after “correctional officer” in clause 148 (1).

[45] Clause 148 (1)

Insert “and give directions as to how the sample is to be supplied” after “analysis”.

[46] Clause 148 (3A)

Insert after clause 148 (3):

- (3A) A urine test must be carried out by a government analyst.

[47] Clause 149 Urine sample whether or not drug use suspected

Insert “holding office or acting in a rank that is” after “correctional officer” in clause 149 (1).

[48] Clause 152 Definition of “withdrawable privilege”

Insert “, except in so far as their use is necessary to enable study or research to be undertaken by an inmate in the inmate’s capacity as a student who is enrolled in a course of study or training” after “library facilities” in clause 152 (f).

[49] Clause 170 Establishment of Ethics Committee

Omit “spiritual adviser” from clause 170 (1) (c).

Insert instead “chaplain”.

[50] Clause 171 Functions of Ethics Committee

Insert after clause 171 (c):

(c1) to advise the Commissioner on ethical issues,

[51] Clause 216 Imposition and extension of supervision conditions

Omit “may at any time before the end of the period of supervision under such a condition extend that period by” from clause 216 (2).

Insert instead “may while the parole order is in force extend the period of supervision by, or impose a further period of supervision of,”.

[52] Clause 216 (2A) and (2B)

Insert after clause 216 (2):

(2A) Nothing in this clause enables the Parole Board to extend the period of supervision beyond the expiry date of the sentence.

(2B) The amendment made to subclause (2) by the *Crimes (Administration of Sentences) Amendment (Miscellaneous) Regulation 2004* extends to a parole order in force as at the commencement of that Regulation.

[53] Clause 236 Declaration about associations with inmates

Insert after clause 236 (5):

(6) This clause does not apply if the association between an officer and offender is through unintentional business, sporting or social contact in a public place.

[54] Clause 240 Searching of officers

Omit “governor or principal security officer of a correctional centre”.

Insert instead “governor of a correctional centre or the principal security officer”.

[55] Clause 246 Vigilance

Omit “or relieved by another correctional officer” from clause 246 (3).

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[56] Clause 260 Issue of firearms to correctional officers not at armed posts

Omit “governor or principal security officer of a correctional centre” from clause 260 (1).

Insert instead “governor of a correctional centre or the principal security officer”.

[57] Clause 282 Attendance of inmates before courts and court officers

Insert after clause 282 (2) (d):

(e) the Refugee Review Tribunal of the Commonwealth.

[58] Clause 282A

Insert after clause 282:

282A Commissioner may exercise other functions

If the Commissioner considers it necessary to do so, the Commissioner may exercise any function that, under this Regulation, may be exercised by an officer of the Department.

[59] Clause 285 Privacy and security safeguards

Omit “agency (other than a correctional officer or Departmental officer) that would enable any person” from clause 285 (1) (f).

Insert instead “agency that would enable any person (other than a correctional officer or Departmental officer)”.

[60] Clause 290

Insert after clause 289:

290 Transitional

A person who, immediately before the commencement of this clause, was an accredited spiritual advisor in relation to a correctional centre is taken to be an accredited chaplain in relation to the correctional centre until the Commissioner revokes his or her accreditation to work as a chaplain.

[61] Schedule 2 Correctional centre offences

Omit the matter relating to clause 126 in Part 1.

[62] Schedule 2, Part 2

Omit the matter relating to clause 68. Insert instead:

Clause 68 Desecrate or abuse religious items

[63] Schedule 2, Part 2

Insert after the matter relating to clause 112:

Clause 113A Possess camera or video or audio recording equipment

[64] Schedule 2, Part 2

Insert after the matter relating to clause 124:

Clause 126 Conceal article for use in escape or other offence

Clause 126A Possess offensive weapon or instrument

[65] Dictionary

Omit the definitions of *accredited spiritual advisor*, *spiritual advisor* and *spiritual authority*.

Insert in alphabetical order:

accredited chaplain means a minister of religion for the time being accredited as a chaplain under clause 62.

Civil Chaplaincies Advisory Committee means the committee, made up of representatives from various religious organisations, that liaises between those religious organisations and government departments in matters of chaplaincy in correctional centres.

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minister of religion, in relation to a religious organisation, means a priest, rabbi, imam or other person appointed or authorised by the appropriate authority for the organisation to minister to its members and to carry out other religious duties.

BY AUTHORITY
