



New South Wales

Summary Offences Regulation 2005

under the

Summary Offences Act 1988

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Summary Offences Act 1988*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to remake, with no substantial changes, the *Summary Offences Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the following matters:

- (a) the procedures to be followed after liquor is seized under section 11 of the *Summary Offences Act 1988 (the Act)*, including procedures concerning the custody and disposal of the liquor,
- (b) the penalties for certain offences under the Act when dealt with by way of a penalty notice,
- (c) the form that a notice of intention to hold a public assembly must take,
- (d) the exemption of certain knives from the operation of section 11F of the Act (which creates the offence of selling knives to children),
- (e) the form that a notice required to be displayed at each entry point to a **declared sex club** (within the meaning of the Act) must take,
- (f) the persons who are **search observation staff members** for the purposes of Part 4A (Offences relating to places of detention) of the Act.

This Regulation is made under the *Summary Offences Act 1988*, including section 35 (the general regulation-making power) and the sections referred to in the Regulation.

This Regulation relates to matters of a machinery nature.

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Summary Offences Regulation 2005

under the

Summary Offences Act 1988

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Summary Offences Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note. This Regulation replaces the *Summary Offences Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation:
seized liquor means liquor seized by a police officer under section 11 of the Act.
the Act means the *Summary Offences Act 1988*.
- (2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.
- (3) Notes included in this Regulation do not form part of this Regulation.

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Clause 4 Summary Offences Regulation 2005

Part 2 Seized liquor

Part 2 Seized liquor

Division 1 Procedure following seizure

4 Reasons for seizure

- (1) When seizing liquor under section 11 of the Act, a police officer must give reasons for the seizure.
- (2) For that purpose, the police officer must tell the person from whom the liquor is seized that the police officer suspects that the person:
 - (a) is under the age of 18 years, and
 - (b) is not under the supervision of a responsible adult, and
 - (c) does not have a reasonable excuse for possessing the liquor.

5 Disposal of seized liquor

- (1) Seized liquor may be disposed of when seized if:
 - (a) at the time of seizure it is in a container which is unsealed or from which part of the contents have been removed, or
 - (b) it is, or is likely soon to become, unfit for human consumption.
- (2) Seized liquor must not be disposed of at the time of seizure if the quantity or value of the liquor, or any other circumstance of the case, makes disposal unreasonable or undesirable.
- (3) Disposal must be by a method that ensures that the liquor disposed of does not remain or become available for consumption by any person.

6 Information as to custody of seized liquor

- (1) This clause applies only if seized liquor is not to be disposed of at the time of seizure.
- (2) At the time of seizure, the police officer concerned must inform the person from whom the liquor is seized:
 - (a) that the liquor will be taken to a specified police station and kept there for at least 24 hours, and
 - (b) that a claim for return of the liquor may be made at that police station.
- (3) A receipt specifying details of the seized liquor must be issued to that person:
 - (a) at the time of seizure, by the police officer concerned, or
 - (b) at the time the liquor is taken to a police station, by any police officer there.

Division 2 Custody and return of seized liquor

7 Seized liquor to be kept at police station

- (1) Seized liquor that is not disposed of at the time of seizure must be taken to the appropriate police station and kept there for at least 24 hours.
- (2) The appropriate police station is the one to which the person from whom the liquor was seized was informed the liquor would be taken.

8 Claim for seized liquor

- (1) Seized liquor held at a police station may be claimed by, and if claimed must be returned to, the person from whom it was seized if:
 - (a) the person establishes that the person was at least 18 years of age at the time of the seizure, or
 - (b) the person establishes that the person had a reasonable excuse for possessing the liquor, or
 - (c) the police officer to whom the claim is made is satisfied that in all the circumstances of the case return of the liquor is justified.
- (2) Return of seized liquor to a person under the age of 18 years may in any case be refused if the person is not accompanied by a responsible adult.
- (3) Before seized liquor is returned, satisfactory proof of entitlement to the liquor may be required, including production of the receipt issued for the seized liquor.

9 Acknowledgment of return of seized liquor

- (1) A person to whom seized liquor is to be returned may be required to sign an acknowledgment that the liquor has been returned.
- (2) Return of seized liquor may be withheld if the acknowledgment is not signed.

10 Disposal of seized liquor in accordance with Commissioner's instructions

When it is no longer intended to keep seized liquor at a police station, it must be dealt with in accordance with the instructions of the Commissioner of Police concerning liquor forfeited to the Crown.

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Clause 11 Summary Offences Regulation 2005

Part 3 Penalty notices

Part 3 Penalty notices

11 Penalty notices: sale of spray cans to persons under 18, custody of knives in public place or school and failure to comply with police directions

For the purposes of section 29A (1) of the Act, the amount prescribed is:

- (a) 3 penalty units in respect of an offence under section 10C of the Act, and
- (b) 5 penalty units in respect of an offence under section 11C of the Act, and
- (c) 2 penalty units in respect of an offence under section 28F of the Act.

12 Penalty notices: hunting on private land without consent of owner or occupier of the land

For the purposes of section 29B (1) of the Act, the amount prescribed in respect of an offence under section 28J of the Act is 5 penalty units.

Part 4 Miscellaneous

13 Notice of intention to hold a public assembly

- (1) Form 1 is the prescribed form of notice to be served on the Commissioner of Police for the purposes of section 23 (1) of the Act.
- (2) The following address is prescribed as the address of the office of the Commissioner of Police for the purposes of section 23 (2) of the Act:
Police Headquarters
1 Charles Street
Parramatta NSW 2150

14 Exempt knives

Section 11F of the Act does not apply to:

- (a) plastic knives that are designed for eating purposes, or
- (b) any blades, other than knife blades or blades forming part of any of the following:
 - (i) machetes,
 - (ii) cleavers,
 - (iii) swords.

15 Declared sex clubs—notice to be displayed

- (1) A notice referred to in section 21E (1) of the Act must contain the following:
SUMMARY OFFENCES ACT 1988



IF YOU ARE UNDER 18 YOU ARE NOT PERMITTED TO ENTER THIS CLUB

- (2) The words contained in the notice must be in capital letters not less than one centimetre in height.

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Clause 16 Summary Offences Regulation 2005

Part 4 Miscellaneous

16 Search observation staff members

The following persons are prescribed for the purposes of the definition of *search observation staff member* in section 27A of the Act:

- (a) if available at the place of detention or its immediate vicinity where the relevant search is to be conducted—a welfare officer, psychologist, clerk or alcohol and other drug worker (being a person who is a non-correctional member of staff),
- (b) if a person referred to in paragraph (a) is not so available—any other non-correctional member of staff.

17 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Summary Offences Regulation 2000* had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Forms

(Clause 3 (2))

Form 1 Notice of intention to hold a public assembly

(Summary Offences Act 1988, section 23)

(Clause 13)

To: The Commissioner of Police

- 1 I, *[name]* of *[address]* on behalf of *[organisation]* notify the Commissioner of Police that on the *[day]* of *[month and year]*, it is intended to hold:
 - *(a) a public assembly, not being a procession, of approximately *[number]* persons, which will assemble at *[place]* at approximately *[time]*, and disperse at approximately *[time]*, or
 - *(b) a public assembly, being a procession of approximately *[number]* persons, which will assemble at *[place]* at approximately *[time]*, and disperse at approximately *[time]*, and at approximately *[time]* the procession will commence and proceed:
[Specify route of proposed assembly, any stopping places, the approximate length of the stop and the approximate time of termination. A diagram may be attached if desired.]
- 2 The purpose of the proposed assembly is *[state purpose]*:
- 3 The following special characteristics associated with the assembly would be useful for the Commissioner of Police to be aware of in regulating the flow of traffic or in regulating the assembly:
 - *(a) There will be *[number]* vehicles and/or* floats involved and their type and dimensions are as follows *[state type and dimensions]*:
 - *(b) There will be *[number]* bands, musicians, entertainers etc, entertaining or addressing the assembly.
 - *(c) The following number and type of animals will be involved in the assembly *[state number and type]*:
 - *(d) Other special characteristics of the proposed assembly are as follows *[state characteristics]*:
- 4 I take responsibility for organising and conducting the proposed public assembly.

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Schedule 1 Forms

5 Notices for the purposes of the *Summary Offences Act 1988* may be served on me at [address].

Telephone:

Signed:

Date:

Capacity/Title:

* Strike out whichever does not apply.

BY AUTHORITY
