



New South Wales

Crimes (Administration of Sentences) Amendment Regulation 2005

under the

Crimes (Administration of Sentences) Act 1999

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

ANTHONY KELLY, M.L.C.,
Minister for Justice

Explanatory note

The objects of this Regulation are:

- (a) to prescribe the circumstances that constitute manifest injustice for the purpose of sections 137B and 143B of the *Crimes (Administration of Sentences) Act 1999* (inserted by the *Crimes (Administration of Sentences) Amendment (Parole) Act 2004*) (these sections allow the Parole Authority to consider the case of an offender or serious offender at any time after the offender's parole eligibility date, and without the need for an application, so as to avoid manifest injustice), and
- (b) to remove the role of case management teams and case management committees in the management and classification of inmates and make provision for the Commissioner of Corrective Services (the **Commissioner**) to nominate the departmental officers who are to be involved in the preparation and review of case management plans for inmates, and
- (c) to make provision in relation to submissions that may be made by the Commissioner to the Parole Authority concerning the release on parole of an offender, and
- (d) to make other minor amendments to the *Crimes (Administration of Sentences) Regulation 2001* consequent on the commencement of the *Crimes (Administration of Sentences) Amendment (Parole) Act 2004*.

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 137B, 143B, 145, 146 and 271 (the general regulation-making power).

2005 No 629

Clause 1 Crimes (Administration of Sentences) Amendment Regulation 2005

Crimes (Administration of Sentences) Amendment Regulation 2005

under the

Crimes (Administration of Sentences) Act 1999

1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) Amendment Regulation 2005*.

2 Commencement

This Regulation commences on 10 October 2005.

3 Amendment of Crimes (Administration of Sentences) Regulation 2001

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

Schedule 1 Amendments

(Clause 3)

- [1] **The whole Regulation (except to the extent to which its provisions are otherwise amended by this Regulation)**
Omit “Parole Board” and “Parole Board’s” wherever occurring.
Insert instead “Parole Authority” and “Parole Authority’s” respectively.
- [2] **Clause 13 Contents of case plan**
Omit “Department” from clause 13 (3) (g).
Insert instead “correctional centre at which the inmate is to be held”.
- [3] **Clauses 14 and 15**
Omit clauses 14 and 15. Insert instead:
- 14 Departmental officers to prepare recommendations**
- (1) Recommendations with respect to an inmate’s case plan are to be prepared by one or more Departmental officers nominated by the Commissioner (*the nominated officer*).
 - (2) The nominated officer must take all reasonable steps to enable the inmate to participate in the development of the recommendations.
 - (3) If inconsistent with the sentencing court’s comments in relation to the inmate, the recommendations must draw attention to, and give reasons for, the inconsistency.
 - (4) The nominated officer must take all reasonable steps to ensure that the recommendations with respect to an inmate are submitted to the nominated review officer referred to in clause 15 within 21 days after being called on to prepare them.
 - (5) In the case of an inmate who is serving a sentence of more than 2 years, the functions of the nominated officer under this clause are to be exercised by a committee of 2 or more Departmental officers nominated by the Commissioner.
 - (6) The constitution and procedure of such a committee is to be determined by the Commissioner.
- 15 Consideration of recommendations by Departmental officers**
- (1) The recommendations prepared in accordance with clause 14 with respect to an inmate’s case plan are to be reviewed by one

2005 No 629

Crimes (Administration of Sentences) Amendment Regulation 2005

Schedule 1 Amendments

or more departmental officers nominated by the Commissioner (*the nominated review officer*), who are to prepare a report on those recommendations.

- (2) The nominated review officer must take all reasonable steps to ensure that the report with respect to an inmate is submitted within 28 days of the recommendations being prepared:
- (a) to the Commissioner, and
 - (b) in the case of a report that relates to a serious offender, or an inmate who has a high security or extreme high security designation, to the Review Council.

[4] Clause 16 Consideration of certain case plans by Review Council

Omit “by a case management committee” from clause 16 (1).

Insert instead “in accordance with clause 15”.

[5] Clause 17 Adoption of case plan by Commissioner

Omit “case management committee’s report” from clause 17 (1) (a).

Insert instead “report prepared in accordance with clause 15”.

[6] Chapter 2, Part 2, Division 3 (Case management teams and committees)

Omit the Division.

[7] Clause 219A

Insert after clause 219:

219A Circumstances constituting manifest injustice

- (1) For the purpose of section 137B of the Act, the following circumstances are prescribed as circumstances which constitute manifest injustice:
- (a) where parole has previously been refused and it subsequently becomes apparent that it was refused on the basis of false, misleading or irrelevant information,
 - (b) where the Parole Authority has previously refused to grant parole because the offender had not, due to circumstances beyond the offender’s control, satisfactorily completed a program and the offender subsequently completes that program satisfactorily,
 - (c) where the Parole Authority has previously refused to grant parole because suitable post-release accommodation for the offender was not available, due to circumstances

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- beyond the offender's control, and such accommodation subsequently becomes available,
- (d) where the Parole Authority has previously refused to grant parole because the offender had not satisfactorily completed a period of external leave, due to circumstances beyond the offender's control, and the offender subsequently completes that period of external leave satisfactorily,
 - (e) where the Parole Authority has previously refused to grant parole because a medical, psychiatric, or psychological report required by the Parole Authority to consider whether the offender should be released on parole was not available, due to circumstances beyond the offender's control, and the report subsequently becomes available and indicates that it is appropriate for the Parole Authority to consider granting parole,
 - (f) where the Parole Authority has previously refused to grant parole because information or material reasonably required by the Parole Authority to consider whether the offender should be released on parole was not available, due to circumstances beyond the offender's control, and that information or material subsequently becomes available,
 - (g) where the Parole Authority has previously refused to grant parole because an appropriate community health service required by the offender was not available to the offender, due to circumstances beyond the offender's control, and the appropriate service subsequently becomes available to the offender,
 - (h) where the Parole Authority has previously refused to grant parole because the offender was charged with a further offence and the charge is subsequently withdrawn or dismissed.
- (2) For the purpose of section 143B of the Act, the circumstances specified in subclause (1) are prescribed as circumstances which constitute manifest injustice in relation to a serious offender if the Review Council has advised the Parole Authority that it is appropriate for the offender to be considered for release on parole.

[8] Clause 220 Notice of initial intention to refuse release on parole

Omit "138 (1) (b)" from clause 220 (1). Insert instead "139 (1) (a)".

2005 No 629

Crimes (Administration of Sentences) Amendment Regulation 2005

Schedule 1 Amendments

[9] Clause 220 (3)

Omit the subclause.

[10] Clause 221A

Insert after clause 221:

221A Submissions by Commissioner

- (1) If the Commissioner notifies the Parole Authority that he or she may wish to make a submission under section 141A of the Act concerning the release on parole of an offender, the Parole Authority must give the Commissioner copies of the reports and other documents intended to be used by the Parole Authority in deciding whether the offender should be released on parole.
- (2) For the purposes of making a submission under section 141A of the Act, the Commissioner:
 - (a) may be represented by a legal practitioner or, with the consent of the Parole Authority, by any other person, and
 - (b) may call and examine any witness who attends, including any witness called by the Parole Authority, and
 - (c) may give evidence on oath, and
 - (d) may produce documents and exhibits to the Parole Authority, and
 - (e) may otherwise adduce, orally and in writing, to the Parole Authority such matters, and address the Parole Authority on such matters, as are relevant to the proceedings before the Parole Authority.

[11] Clause 222 Notices to victims

Omit “preliminary” from clause 222 (1).

[12] Clause 222 (1)

Omit “an offender”. Insert instead “a serious offender”.

[13] Clause 222 (2)

Omit “section 146 (3) (a)”. Insert instead “section 146 (5) (b)”.

[14] Clause 222 (2)

Omit “the offender”. Insert instead “the serious offender”.

[15] Schedule 4 Forms

Omit Form 2.

[16] Schedule 4, Forms 3, 5 and 6

Omit “the Board” wherever occurring. Insert instead “the Parole Authority”.

[17] Schedule 4, Form 5

Omit “The Board”. Insert instead “The Parole Authority”.

[18] Schedule 4, Forms 8 and 9

Omit “(*Judicial Member/Secretary* of the Parole Board*)” wherever occurring.

Insert instead “(*Judicial Member of Parole Authority*)”.

[19] Dictionary

Omit the definitions of *case manager* and *classification manager*.