



New South Wales

Crimes (Administration of Sentences) Amendment (Compulsory Drug Treatment Correctional Centre) Regulation 2006

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*.

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

Explanatory note

The object of this Regulation is to amend the *Crimes (Administration of Sentences) Regulation 2001 (the Principal Regulation)* as a consequence of the commencement of the *Compulsory Drug Treatment Correctional Centre Act 2004*. Specifically, the object of those amendments is as follows:

- (a) to apply the provisions of the Principal Regulation that relate to parole to offenders serving their sentences by way of compulsory drug treatment detention (**proposed clause 201A**),
- (b) to modify the application of Part 2 of the *Crimes (Administration of Sentences) Act 1999* (and the provisions of the regulations made under that Part) that apply to and in respect of an offender who is in closed detention (Stage 1) or semi-open detention (Stage 2) (**proposed clause 201B and proposed Schedule 6**),
- (c) to make provision regarding certain information about compulsory drug treatment offenders that must be provided to the Drug Court or the Commissioner of Corrective Services (**proposed clause 201C**),
- (d) to make provision regarding the periodic and random drug testing of compulsory drug treatment offenders and evidence of such tests (**proposed clauses 201D–201F**),
- (e) to set out certain conditions that may be imposed on a compulsory drug treatment offender in semi-open detention (Stage 2) or community custody (Stage 3) as part of the offender's community supervision order (**proposed clause 201G**).

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 106T, 106V, 106Y, 106ZA and 271 (the general regulation-making power).

2006 No 359

Clause 1

Crimes (Administration of Sentences) Amendment (Compulsory Drug Treatment Correctional Centre) Regulation 2006

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(Compulsory Drug Treatment Correctional Centre)
Regulation 2006**

under the

Crimes (Administration of Sentences) Act 1999

1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) Amendment (Compulsory Drug Treatment Correctional Centre) Regulation 2006*.

2 Commencement

This Regulation commences on 21 July 2006.

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] Chapter 4A

Insert after Chapter 4:

Chapter 4A Compulsory drug treatment detention

201A Regulations relating to parole of offenders serving sentences by way of compulsory drug treatment detention: section 106T

Chapter 6 of this Regulation, and Forms 1 and 3, apply to an offender who is serving a sentence by way of compulsory drug treatment detention, subject to the following:

- (a) references to the Parole Authority are taken to be references to the Drug Court,
- (b) references to the Secretary of the Parole Authority are taken to be references to the registrar of the Drug Court.

Note. Section 106T of the Act provides that the Drug Court is the parole authority for offenders in compulsory drug treatment detention. That section provides that Part 6 of the Act (Parole) applies to an offender who is serving a sentence by way of compulsory drug treatment detention, subject to certain modifications.

201B Application of Part 2 to Stages 1 and 2 compulsory drug treatment detention: section 106V

- (1) For the purposes of section 106V (1) of the Act, the modifications set out in Schedule 6 are prescribed.
- (2) For the avoidance of doubt, a reference in Part 2 of the Act (and the provisions of any regulations made under that Part) as applied by section 106V of the Act to an *inmate* or *convicted inmate* is taken to be a reference to an offender who is in closed detention (Stage 1) or semi-open detention (Stage 2).

Note. Section 106V of the Act provides that Part 2 of the Act (and the provisions of any regulations made under that Part), subject to any modifications prescribed by the regulations, apply to and in respect of an offender who is in closed detention (Stage 1) or semi-open detention (Stage 2).

2006 No 359

Crimes (Administration of Sentences) Amendment (Compulsory Drug Treatment Correctional Centre) Regulation 2006

Schedule 1 Amendments

201C Provision of information relating to offenders: section 106Y

- (1) For the purposes of section 106Y (1) of the Act, the following persons are prescribed, but only if they are involved in the administration of, or provide services in connection with, an offender's drug treatment under Part 4A of the Act:
 - (a) persons acting for or on behalf of any area health service within the meaning of the *Health Services Act 1997*,
 - (b) persons acting for or on behalf of an organisation providing treatment to an offender in connection with the offender's program,
 - (c) any medical practitioner, therapist, counsellor or psychologist.
- (2) For the purposes of section 106Y (2) of the Act:
 - (a) the information must be provided to the registrar of the Drug Court or the Commissioner as soon as practicable, but in any case, within 48 hours of the person becoming aware of the information, and
 - (b) the information may be provided to the registrar of the Drug Court or the Commissioner:
 - (i) personally, or
 - (ii) by letter sent by post or otherwise delivered to the offices of the registrar or the Commissioner, or
 - (iii) by letter sent to the registrar by means of document exchange facilities, or
 - (iv) by facsimile or other electronic transmission, and
 - (c) the information provided to the registrar or the Commissioner otherwise than in writing must be confirmed in writing within 24 hours unless the person to whom the information has been provided indicates otherwise.

201D Periodic drug testing

- (1) The Commissioner is to ensure that each offender is to undergo periodic drug testing in accordance with this clause:
 - (a) in relation to an offender in closed detention (Stage 1)—twice a week, and
 - (b) in relation to an offender in semi-open detention (Stage 2) or community custody (Stage 3)—3 times a week.

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- (2) A person authorised by the Commissioner may, in accordance with the instructions of the Commissioner, require an offender to supply for testing or analysis one or more of the following as a sample and give directions as to how the sample is to be supplied:
 - (a) breath,
 - (b) urine,
 - (c) oral fluid,
 - (d) hair.
 - (3) The directions may require the offender to comply with directions given by another person as to how the sample is to be supplied.
 - (4) A drug test must be carried out by a government analyst.
 - (5) A sample may be required under this clause and tested for the presence of a drug even though the offender concerned may not be reasonably suspected of having administered a drug to himself or herself or of being under the influence of a drug.

201E Random drug testing

- (1) The Commissioner is to ensure that offenders in compulsory drug treatment detention are required to undergo random drug testing in accordance with this clause at such times as the Commissioner sees fit.
- (2) A person authorised by the Commissioner may, in accordance with the instructions of the Commissioner, require an offender to supply for testing or analysis one or more of the following as a sample and give directions as to how the sample is to be supplied:
 - (a) breath,
 - (b) urine,
 - (c) oral fluid,
 - (d) hair.
- (3) The directions may require the offender to comply with directions given by another person as to how the sample is to be supplied.
- (4) A drug test must be carried out by a government analyst.
- (5) A sample may be required under this clause and tested for the presence of a drug even though the offender concerned may not be reasonably suspected of having administered a drug to himself or herself or of being under the influence of a drug.

2006 No 359

Crimes (Administration of Sentences) Amendment (Compulsory Drug Treatment Correctional Centre) Regulation 2006

Schedule 1 Amendments

201F Evidence as to use of drugs

- (1) In any proceedings before the Drug Court, a certificate signed by an authorised officer to the effect that:
 - (a) a person received a sample obtained in a specified manner, or
 - (b) the person arranged for the sample to be submitted for analysis by a government analyst to determine the presence of any drugs in an offender's body or the sample, or
 - (c) the container was sealed, and marked or labelled, in a specified manner,is admissible in evidence of the facts so certified.
- (2) In any such proceedings, a certificate signed by a government analyst to the effect that, on a specified day:
 - (a) the analyst received for analysis a container holding a specified sample, or
 - (b) the container, when received, was sealed with an unbroken seal, and was marked or labelled in a specified manner, or
 - (c) the analyst carried out an analysis of the sample to determine the presence of drugs in the sample, or
 - (d) the analyst determined that a specified drug was present or was present to a specified extent in the sample, or
 - (e) the analyst was, at the time of the analysis, a government analyst,is admissible in evidence of the facts so certified.
- (3) In any such proceedings:
 - (a) evidence that a government analyst received a container holding a sample, being a container that was marked or labelled to indicate that it held a sample obtained from a specified offender on a specified day, is evidence that the sample was a sample obtained from that offender on that day, and
 - (b) evidence that the container, when received, was sealed with an unbroken seal is evidence that the sample had not been tampered with before it was received by the government analyst.

201G Conditions that may be imposed as part of community supervision orders for Stage 2 and Stage 3 offenders: section 106O (2) (e)

The following are conditions that may be imposed as part of a community supervision order on an offender in semi-open detention (Stage 2) and community custody (Stage 3):

- (a) the offender must advise the Director as soon as possible if he or she is arrested or detained by a police officer,
- (b) the offender must submit to searches of places or things under his or her immediate control, as directed by the Director,
- (c) the offender must submit to electronic monitoring of his or her compliance with the community supervision order, and must comply with all instructions given by the Director in relation to the operation of monitoring systems,
- (d) the offender must not tamper with, damage or disable monitoring equipment,
- (e) the offender must inform any employer of the compulsory drug treatment order and, if so directed by the Director, of the nature of the offence that occasioned it,
- (f) the offender must authorise contact between any employer of the offender and the Director,
- (g) when not otherwise employed, the offender must undertake community service work if directed by the Director,
- (h) the offender must comply with any reasonable direction of the Director in relation to association with specified persons,
- (i) the offender must comply with any reasonable direction of the Director in relation to the maintenance of or obtaining of employment,
- (j) the offender must comply with all other reasonable directions of the Director,
- (k) the offender must reside only at accommodation approved by the Drug Court,
- (l) the offender must remain at the approved accommodation at all times otherwise than:
 - (i) when engaged in activities approved or arranged by the Director, or
 - (ii) when faced with immediate danger (such as in a fire or medical emergency),

2006 No 359

Crimes (Administration of Sentences) Amendment (Compulsory Drug Treatment Correctional Centre) Regulation 2006

Schedule 1 Amendments

- (m) the offender must adhere to an approved program of activities during approved absences from the approved accommodation,
- (n) the offender must advise the Director as soon as practicable after leaving the approved accommodation due to immediate danger,
- (o) the offender must allow any visit to the approved accommodation by the Director, and any person approved by the Director, at any time.

[2] Schedule 6

Insert after Schedule 5:

Schedule 6 Modifications to provisions of the Act and this Regulation as they apply to offenders in Stages 1 and 2 compulsory drug treatment detention

(Clause 201B (1))

1 Definitions

In this Schedule:

Stage 1 compulsory drug treatment detention means closed detention (Stage 1) within the meaning of section 106D of the Act.

Stage 2 compulsory drug treatment detention means semi-open detention (Stage 2) within the meaning of section 106D of the Act.

2 Provisions of Act and Regulation that do not apply

The following do not apply to or in respect of an offender serving a sentence in Stage 1 or Stage 2 compulsory drug treatment detention:

- (a) Divisions 1 (except sections 6 and 7), 2, 5 and 7 of Part 2 of the Act,
- (b) sections 52–65, 78 (3) and (6) and 79 (v) and (v1) of the Act,
- (c) Part 2 of Chapter 2 of this Regulation,

- (d) clauses 32–34, 38, 61, 75, 76, 85 (1), 98, 110A, 113 (2) (b), 142, 148–150, 151 (b), 168, 172A and 172B of this Regulation,
- (e) the words “Subject to clause 110A,” in clause 111 of this Regulation.

3 Additional provision

The following provision is taken to apply to or in respect of an offender serving a sentence in Stage 1 or Stage 2 compulsory drug treatment detention as if the provision were included after section 51 of the Act:

51A Correctional centre offences are conditions of personal plans

Provisions of this Act and the regulations that are declared by the regulations to be correctional centre offences are taken to be conditions of each offender’s personal plan.