



New South Wales

# Crimes (Administration of Sentences) Amendment Regulation 2009

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 ROBERTSON, M.L.C.,  
Minister for Corrective Services

## Explanatory note

The object of this Regulation is to establish a new designation for inmates who are believed to constitute an extreme danger to other people or to good order and security and who may engage in, or incite others to engage in, activities that constitute a serious threat to the peace, order or good government of the State or any other place. These inmates will be known as ***extreme high risk restricted inmates*** and will be subject to a stricter security and management regime than other inmates.

The Regulation provides as follows:

- (a) extreme high risk restricted inmates will generally be allowed one visit only each week, and visitors may be required to undergo a criminal record check and be pre-approved by the Commissioner of Corrective Services (***the Commissioner***),
- (b) visits to extreme high risk restricted inmates will be non-contact visits and must be conducted in English or another approved language with an interpreter present,
- (c) all letters and parcels to and from extreme high risk restricted inmates will be opened and read, other than correspondence with exempt bodies (such as the Ombudsman) and Australian legal practitioners in certain circumstances,
- (d) all correspondence from extreme high risk restricted inmates must be written in English or another approved language and may be translated,
- (e) all telephone calls by extreme high risk restricted inmates must be conducted in English or another approved language,
- (f) extreme high risk restricted inmates will not be allowed to receive any money directly or into their accounts (other than money paid to inmates by the Commissioner), and any such money will be returned to the sender or confiscated,

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- (g) extreme high risk restricted inmates will not have access to the Official Visitor at the correctional centre in which they are held (as is currently the case for Category AA male inmates and Category 5 female inmates),
- (h) reviews of directions under which extreme high risk restricted inmates are held in segregated or protective custody are to be heard by the Chairperson of the Serious Offenders Review Council alone (rather than the full Council, as is the case for other inmates),
- (i) extreme high risk restricted inmates will be deemed as serious offenders for the purposes of the *Crimes (Administration of Sentences) Act 1999* and the regulations made under that Act.

The Regulation also:

- (a) provides that the Serious Offenders Review Council will not be required to disclose in the records of the Council's proceedings any information the disclosure of which may prejudice national security, and
- (b) further provides for the circumstances in which a correctional officer may terminate an inmate's telephone call, and
- (c) makes further provision with respect to letters and parcels sent to or by certain categories of inmates, and
- (d) makes other consequential and minor amendments.

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 3 (1) (the definition of *serious offender*), 79, 197A and 271 (the general regulation-making power).

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## **Crimes (Administration of Sentences) Amendment Regulation 2009**

under the

Crimes (Administration of Sentences) Act 1999

### **1 Name of Regulation**

This Regulation is the *Crimes (Administration of Sentences) Amendment Regulation 2009*.

### **2 Commencement**

This Regulation commences on 13 February 2009.

### **3 Amendment of Crimes (Administration of Sentences) Regulation 2008**

The *Crimes (Administration of Sentences) Regulation 2008* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 3)

**[1] Clauses 15 (2) (b), 16 (1), 18 (b), 19 (1), 20 (1) (a) and (3), 27 (1) (b) and 328 (1) (a)**

Omit “or extreme high security” wherever occurring.

Insert instead “, extreme high security or extreme high risk restricted”.

**[2] Clause 25 Designation of high security, extreme high security and extreme high risk restricted inmates**

Insert after clause 25 (2):

(2A) The Commissioner may designate an inmate as an extreme high risk restricted inmate if of the opinion that:

- (a) the inmate constitutes:
  - (i) an extreme danger to other people, or
  - (ii) an extreme threat to good order and security, and
- (b) there is a risk that the inmate may engage in, or incite other persons to engage in, activities that constitute a serious threat to the peace, order or good government of the State or any other place.

**[3] Clause 25 (4)**

Insert after clause 25 (3):

(4) Extreme high risk restricted inmates are prescribed to be serious offenders, as referred to in paragraph (f) of the definition of *serious offender* in section 3 (1) of the Act.

**[4] Clause 26 Management of high security, extreme high security and extreme high risk restricted inmates**

Omit “high security and extreme high security” wherever occurring.

Insert instead “high security, extreme high security and extreme high risk restricted”.

**[5] Clause 72 Number of visits**

Insert after clause 72 (2):

(2A) However, an extreme high risk restricted inmate may be visited once a week only, or more often if the Commissioner so determines.

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**[6] Clause 89A**

Insert after clause 89:

**89A Approval of visitors to extreme high risk restricted inmates**

- (1) A person may visit an extreme high risk restricted inmate only if the person has been approved by the Commissioner as a visitor to that inmate.
- (2) The Commissioner may require a visitor to undergo a criminal record check before approving the person as a visitor to an extreme high risk restricted inmate.
- (3) The Commissioner may refuse to approve a person as a visitor to an extreme high risk restricted inmate (on the basis of a criminal record check or for any other reason).
- (4) The Commissioner may revoke an approval of a person as a visitor to an extreme high risk restricted inmate at any time.
- (5) The Commissioner may authorise a departure from the requirements of this clause in respect of a particular visitor or a particular visit.
- (6) This clause does not limit the general power of a general manager to refuse to allow a person to visit an inmate under clause 100.

**[7] Clause 95 Prevention of physical contact with inmates**

Omit “or Category 5 female inmate” from clause 95 (4).

Insert instead “, Category 5 female inmate or an extreme high risk restricted inmate”.

**[8] Clause 95A**

Insert after clause 95:

**95A Visits to extreme high risk restricted inmates to be conducted in English or approved language**

- (1) During a visit to an extreme high risk restricted inmate, all communications must be conducted in English or another language approved by the Commissioner.
- (2) If communications are conducted in a language other than English, the visit must take place within the hearing of an interpreter approved by the Commissioner.
- (3) In any case, a visit to an extreme high risk restricted inmate must take place within the hearing of a correctional officer.

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- (4) The Commissioner may authorise a departure from the requirements of this clause in respect of a particular visitor or a particular visit.

**[9] Clause 107 Certain correspondence privileged**

Omit clause 107 (2)–(4).

**[10] Clause 107A**

Insert after clause 107:

**107A Certain correspondence not to be sent to exempt bodies and exempt persons**

- (1) An exempt body or exempt person may, by written notice sent to the Commissioner, direct that letters or parcels from a specified inmate, or from inmates of a specified class, are not to be posted to that body or person.
- (2) A letter or parcel from an inmate the subject of a notice under this clause may be confiscated (despite any other provision of this Regulation) and dealt with in accordance with the directions of the Commissioner.
- (3) An inmate need not be informed of any action taken under this clause.

**[11] Clauses 108, 108A and 108B**

Omit clause 108. Insert instead:

**108 Correspondence with Category AA male inmates, Category 5 female inmates and extreme high risk restricted inmates**

**(1) General rule regarding correspondence**

The general manager of a correctional centre or a nominated officer must, subject to this clause, open and inspect, and read and copy the contents of, any letter or parcel that is:

- (a) sent by a Category AA male inmate, a Category 5 female inmate or an extreme high risk restricted inmate to any person or body, or
- (b) sent to a Category AA male inmate, a Category 5 female inmate or an extreme high risk restricted inmate by any person or body.

**(2) Correspondence to exempt bodies**

As soon as practicable after receiving a letter or parcel from a Category AA male inmate, a Category 5 female inmate or an

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extreme high risk restricted inmate addressed to an exempt body, a nominated officer must post the letter or parcel to the addressee, without opening, inspecting or reading its contents.

**(3) Correspondence from exempt bodies**

As soon as practicable after receiving from an exempt body a letter or parcel addressed to a Category AA male inmate, a Category 5 female inmate or an extreme high risk restricted inmate, a nominated officer must deliver the letter or parcel to the inmate without opening, inspecting or reading its contents, but only if:

- (a) the letter or parcel is accompanied by a note addressed to the general manager:
  - (i) requesting that it be delivered to the inmate without being opened, inspected or read by any person other than the inmate, and
  - (ii) declaring that it does not contain any prohibited goods, and
  - (iii) including the name and contact details of a person who can be contacted to confirm that the letter or parcel was in fact sent by the exempt body, and
- (b) a nominated officer has confirmed with the exempt body that the body has in fact sent it and addressed it to the inmate.

**(4) Correspondence from legal practitioners**

As soon as practicable after receiving a letter or parcel addressed to a Category AA male inmate, a Category 5 female inmate or an extreme high risk restricted inmate from a legal practitioner, a nominated officer must deliver the letter or parcel to the inmate without opening, inspecting or reading its contents, but only if:

- (a) the letter or parcel is accompanied by a note addressed to the general manager:
  - (i) requesting that it be delivered to the inmate without being opened, inspected or read by any person other than the inmate, and
  - (ii) declaring that it does not contain any prohibited goods, and
  - (iii) claiming that the contents relate to the inmate's affairs and are legally privileged, and
  - (iv) including the name and contact details of a person who can be contacted to confirm that the letter or parcel was in fact sent by the legal practitioner, and

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- (b) a nominated officer has confirmed with the legal practitioner that the practitioner has in fact sent it and addressed it to the inmate.
- (5) A nominated officer may require a Category AA male inmate, a Category 5 female inmate or an extreme high risk restricted inmate to open any letter or parcel from an exempt body or legal practitioner in the presence of the nominated officer, if of the opinion that it may contain prohibited goods or contravene this Regulation.
- (6) If a letter or parcel opened by, or in the presence of, the general manager or a nominated officer contains prohibited goods or contravenes this Regulation, the general manager or nominated officer must confiscate the letter or parcel and its contents and deal with it in accordance with the directions of the Commissioner.
- (7) The Commissioner may, on the application of an exempt person, make an order declaring that any specified provision of this Regulation is to apply (either unconditionally or subject to conditions) to letters and parcels sent to or by that person as if that person were an exempt body and, on the making of such an order, the provision so applies.
- (8) An inmate need not be informed of any action taken under this clause.
- (9) This clause applies to fax transmissions in the same way as it applies to letters and parcels.

#### **108A Additional requirements for correspondence from extreme high risk restricted inmates**

- (1) All correspondence from an extreme high risk restricted inmate to any other person (other than an exempt body) must be written in English or another language approved by the Commissioner, unless the Commissioner otherwise authorises.
- (2) If a letter or parcel received from an extreme high risk restricted inmate and addressed to any person (other than an exempt body) contains any correspondence that is written in a language other than English, the general manager or nominated officer may arrange for a translation of the correspondence.



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**108B Register of correspondence with Category AA male inmates, Category 5 female inmates and extreme high risk restricted inmates**

- (1) A register must be kept for each correctional centre with respect to correspondence sent to and by a Category AA male inmate, a Category 5 female inmate or an extreme high risk restricted inmate.
- (2) A nominated officer must cause the following to be recorded in the register:
  - (a) in the case of a letter or parcel received from an inmate to be sent to any person or body:
    - (i) the date on which it was received,
    - (ii) the name of the inmate from whom it was received,
    - (iii) the name of the person or body to whom it was addressed,
    - (iv) the name of the nominated officer by whom it was dealt with,
    - (v) whether the correspondence was translated,
    - (vi) particulars of any further action taken with respect to the letter or parcel and its contents, including particulars of any confiscation or disposal of any of its contents,
    - (vii) any other incidental particulars,
  - (b) in the case of a letter or parcel received from any person or body to be delivered to an inmate:
    - (i) the date on which it was received,
    - (ii) the name of the person or body from whom it was received,
    - (iii) the name of the inmate to whom it was addressed,
    - (iv) the name of the nominated officer by whom it was dealt with,
    - (v) particulars of any further action taken with respect to the letter or parcel and its contents, including particulars of any confiscation or disposal of any of its contents,
    - (vi) in the case of a letter or parcel received from an exempt body or legal practitioner, the date on which a nominated officer confirmed with the exempt body or legal practitioner that it did in fact send the letter or parcel and address it to the inmate,
    - (vii) any other incidental particulars.

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- (3) A Category AA male inmate, a Category 5 female inmate or an extreme high risk restricted inmate who receives a letter or parcel must sign the register to acknowledge receipt of any such letter or parcel.

**[12] Clause 109 Correspondence with legal practitioners**

Omit “clause 108” from clause 109. Insert instead “clauses 108 and 108A”.

**[13] Clause 110 Permission required to make telephone calls or send faxes**

Omit clause 110 (4). Insert instead:

- (4) A correctional officer may terminate an inmate’s telephone call or fax communication if of the opinion that:
- (a) the continuation of the call or communication will, or is likely to:
    - (i) prejudice good order and security of any correctional centre, or
    - (ii) constitute a threat to the personal security of any person, or
  - (b) the call or communication is being conducted in contravention of this Regulation.

**[14] Clause 110 (6)**

Insert after clause 110 (5) before the note to the clause:

- (6) All telephone calls made by an extreme high risk restricted inmate must be conducted in English or another language approved by the Commissioner, unless the telephone call is made to an exempt body or unless the Commissioner otherwise authorises.

**[15] Clause 115 Property brought to correctional centre by other persons**

Insert at the end of the clause:

- (2) This clause does not apply to any money sent to an extreme high risk restricted inmate or delivered to the general manager of a correctional centre for payment into the inmate’s account.

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**[16] Clause 115A**

Insert after clause 115:

**115A Extreme high risk restricted inmates not to receive money**

- (1) It is unlawful for an extreme high risk restricted inmate to acquire or retain possession of money (including any money paid or proposed to be paid into the inmate's account).
- (2) The general manager of a correctional centre may seize any money sent to an extreme high risk restricted inmate or delivered to the general manager of a correctional centre for payment into the inmate's account.
- (3) The money is to be returned to, or made available for collection by, the sender or giver.
- (4) If the sender or giver cannot be located after reasonable inquiries, or does not collect the money within 30 days of being notified of its availability for collection, the Commissioner may confiscate the money.
- (5) Any money so confiscated becomes the property of the State, to be disposed of as the Commissioner directs.
- (6) The general manager of a correctional centre must cause a record to be kept of all money dealt with under this clause.
- (7) Such a record must contain the following information:
  - (a) the amount of money,
  - (b) the date on which the money was received,
  - (c) whether the money was returned to the sender or giver or confiscated by the Commissioner,
  - (d) if the money was returned to the sender or giver:
    - (i) the date on which it was sent to or collected by the sender or giver, and
    - (ii) the name and address of the person to whom it was sent or the name, address and signature of the person by whom it was collected,
  - (e) if the money was confiscated by the Commissioner, the date on which it was confiscated,
  - (f) any other incidental particulars.
- (8) This clause does not prevent payments being made into an inmate's account under section 7 of the Act.

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**[17] Clause 155 Notice of availability of Official Visitors**

Omit “or Category 5 female inmate” from clause 155 (3).

Insert instead “, Category 5 female inmate or extreme high risk restricted inmate”.

**[18] Clause 156 Complaints and inquiries**

Omit “or Category 5 female inmate” from clause 156 (5).

Insert instead “, a Category 5 female inmate or an extreme high risk restricted inmate”.

**[19] Clause 159 Requests to Minister, Commissioner or Official Visitors**

Omit “or Category 5 female inmate” from clause 159 (5).

Insert instead “, a Category 5 female inmate or an extreme high risk restricted inmate”.

**[20] Clause 320 Additional functions of Review Council**

Omit “and extreme high security” from clause 320 (1) (c) and (d), wherever occurring.

Insert instead “, extreme high security and extreme high risk restricted”.

**[21] Clause 321A**

Insert after clause 321:

**321A Functions of Review Council with respect to extreme high risk restricted inmates**

The functions of the Review Council under Division 2 of Part 2 of the Act, in relation to extreme high risk restricted inmates, are to be exercised by the Chairperson.

**Note.** Section 197A of the Act provides that in such a case the Review Council is taken to be constituted by the Chairperson alone.

**[22] Clause 322 Records of proceedings**

Insert at the end of the clause:

- (2) In keeping a record of proceedings, the Review Council may take such steps as it considers appropriate to ensure that any information the disclosure of which may prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth) is not so disclosed.

**[23] Clause 329 Privacy and security safeguards**

Omit “departmental” from clause 329 (1) (d) (ii).

Insert instead “as soon as possible”.

**[24] Dictionary**

Insert in alphabetical order:

*extreme high risk restricted inmate* means an inmate who is designated as an extreme high risk restricted inmate as referred to in clause 25.

**[25] Dictionary, definition of “high security or extreme high security designation”**

Omit the definition. Insert instead:

*high security, extreme high security or extreme high risk restricted designation* means a designation under clause 25.

**[26] Dictionary, definition of “prohibited goods”**

Insert at the end of paragraph (e) of the definition:

, or

- (f) anything that, in the opinion of a nominated officer, is intended to facilitate, incite or be used in connection with any unlawful activity.