



Crimes (Administration of Sentences) Amendment Regulation 2012

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*.

GREG SMITH, MP
Minister for Justice

Explanatory note

The object of this Regulation is to amend the *Crimes (Administration of Sentences) Regulation 2008* as follows:

- (a) to make further provision for the placement, classification and case management of inmates of correctional centres,
- (b) to provide that case plans (which indicate the services and programs in which an inmate should be encouraged to participate) are only required for inmates who have been convicted and not for inmates who are on remand and are to be prepared every 12 months instead of every 6 months,
- (c) to update references relating to Corrective Services NSW (which is part of the Department of Attorney General and Justice) and positions within Corrective Services NSW.

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

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Clause 1 Crimes (Administration of Sentences) Amendment Regulation 2012

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Crimes (Administration of Sentences) Act 1999

1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) Amendment Regulation 2012*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Crimes (Administration of Sentences) Regulation 2008

[1] Part 2.2 Case management and classification

Omit the heading to Division 1. Insert instead:

Division 1 Placement of inmates

[2] Clause 12

Omit clause 12. Insert instead:

12 Placement of inmates

- (1) In making a determination as to the correctional centre in which an inmate is to be placed, the Commissioner is to have regard to the following matters:
 - (a) the inmate's classification,
 - (b) if available, the sentencing court's comments in relation to the inmate,
 - (c) any assessment that has been made as to the inmate's physical or mental health,
 - (d) the provision of health care services to the inmate,
 - (e) whether or not the inmate is likely to be removed from Australia,
 - (f) the inmate's criminal history and history of behaviour during any previous period of imprisonment,
 - (g) the inmate's history of behaviour while subject to supervision otherwise than as an inmate pursuant to any conditions of bail or parole or any other conditions imposed by a court order (including an extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*),
 - (h) any assessment that has been made (whether by officers of Corrective Services NSW or of any other government department or public authority) as to:
 - (i) the level of risk that the inmate poses to good order and security, and
 - (ii) the likelihood that the inmate may try to escape from custody, and
 - (iii) any factors contributing to the inmate's criminal behaviour, and

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- (iv) the likelihood of the inmate committing further offences, whether of the same or of a different kind,
 - (i) the need to protect the community,
 - (j) the availability of resources and appropriate programs and services at the correctional centre at which the inmate is to be held.
- (2) Subclause (1) does not limit the matters that the Commissioner may have regard to in making a determination as to an inmate's placement in a correctional centre.
- (3) An inmate's placement in a correctional centre is to be reviewed at least once every 12 months and at such other times as the Commissioner may determine.

[3] Part 2.2, Division 1A

Omit clause 13. Insert instead:

Division 1A Case plans for convicted inmates

13 Case plans to be prepared for all convicted inmates

- (1) The Commissioner is to ensure that a case plan (the *initial case plan*) is prepared and adopted for each convicted inmate as soon as possible after the inmate becomes a convicted inmate.
- (2) However, an initial case plan is not required for a convicted inmate who has less than 6 months remaining until the inmate's earliest release date.
- (3) A subsequent case plan is to be prepared and adopted for a convicted inmate at least once every 12 months and at such other times as the Commissioner determines.
- (4) Despite subclause (3):
 - (a) a subsequent case plan is not required for an inmate if the inmate's earliest possible release date is within 3 months from the date on which the case plan is due to be prepared and adopted (unless the Parole Authority or Review Council has made a recommendation to the Commissioner about the inmate), and
 - (b) a subsequent case plan is not required for an inmate who is participating in a service or a program under Division 5 of Part 2.3 in accordance with the inmate's case plan until the inmate completes or ceases to participate in the service or program.

- (5) In this clause, *earliest possible release date*, in relation to a convicted inmate, means the first date on which the inmate is entitled to be released from custody or becomes eligible for release on parole.

Note. Services and programs are also provided to inmates for whom case plans are not required. See clause 57.

13A Contents of case plan

- (1) A case plan for a convicted inmate is to indicate the services and programs in which the inmate should be encouraged to participate.

Note. An inmate's case plan will also indicate the correctional centre at which the inmate is to be held and the inmate's classification.

- (2) A case plan may deal with any matter relating to the management of the convicted inmate, including the following:
- (a) the provision of services and programs to the inmate under Division 5 of Part 2.3,
 - (b) the provision of health care services to the inmate,
 - (c) in the case of an inmate who appears to be at risk of self-harm, a strategy to minimise the likelihood of self-harm occurring,
 - (d) in the case of an inmate who has a disability, a strategy to minimise any disadvantage suffered by the inmate on account of the disability, including in relation to the inmate's suitability to carry out work,
 - (e) the provision of pre-release and post-release assistance to the inmate (such as advice on the availability within the community of financial, accommodation and employment assistance and of medical and counselling services and alcohol and other drug treatment programs).
- (3) In preparing a case plan for a convicted inmate, regard is to be had to the matters to which the Commissioner would be required to have regard if making a determination as to the correctional centre in which an inmate is to be placed.

[4] Clause 14 Departmental officers to prepare recommendations

Omit clause 14 (5) and (6).

[5] Clause 20 Decision by Commissioner as to inmate's placement

Omit "who is a serious offender, or an inmate who has a high security, extreme high security or extreme high risk restricted designation" from clause 20 (1) (a).

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[6] Clause 20 (1) (b)

Insert “in the case of an inmate who is a serious offender or an inmate who has a high security, extreme high security or extreme high risk restricted designation—” before “any submissions”.

[7] Clauses 18–20

Renumber the clauses as 12A, 12B and 12C and insert after clause 12.

[8] Clause 21A

Insert before clause 22 in Division 2:

21A Classification of inmates

- (1) As soon as practicable after an inmate is first received into a correctional centre, the Commissioner is to determine the inmate’s classification in accordance with this Division.
- (2) An inmate’s classification is to be reviewed at least once every 12 months and at such other times as the Commissioner may determine.

[9] Clause 24 Escape-risk classifications

Omit “for the first case plan” from clause 24 (1).

[10] Part 2.2, Division 3

Insert after clause 29:

Division 3 Miscellaneous

29A Inmate may request review of placement, classification and case plan

- (1) An inmate may, at any time, request that the Commissioner review a determination of any of the following matters:
 - (a) the correctional centre in which the inmate is placed,
 - (b) the inmate’s classification,
 - (c) the contents of the inmate’s case plan (in the case of a convicted inmate).

Note. The Commissioner is required to review the placement and classification of an inmate at least once every 12 months. Case plans for convicted inmates must generally be prepared every 12 months.
- (2) However, an inmate cannot request a review of the determination of the inmate’s classification or placement in a correctional

centre that occurs when the inmate is first received into a correctional centre.

- (3) The Commissioner is required to review a determination under this clause only if:
- (a) the inmate can present information relevant to the determination that was not available to the inmate or provided to the Commissioner at the time the determination was made, or
 - (b) the inmate demonstrates that he or she was denied procedural fairness at the time the determination was made.
- (4) The Commissioner may refuse a request to review a determination if the Commissioner is of the opinion that:
- (a) the request is frivolous or vexatious, or
 - (b) in the case of an inmate requesting a review of his or her placement in a particular correctional centre, that the placement is reasonable taking into account the availability of accommodation for inmates in correctional centres across New South Wales.

[11] Clause 57 Inmate services and programs

Insert after clause 57 (4):

- (4A) The Commissioner may prepare a plan outlining the services and programs to be made available to an inmate who is not a convicted inmate or for whom a case plan is not otherwise required under Division 1A of Part 2.2.

Note. Case plans are generally required to be prepared for all convicted inmates under Division 1A of Part 2.2. A case plan indicates the services and programs that an inmate should be encouraged to participate in and deals with other matters relating to the management of the inmate.

[12] Clauses 111 (2) (d), 211 (1) (a), 212 (1), 254 (2), 258 (2), 262 (4) (c), 324 (2), 326, 329 (1) (b), Schedule 5 (matters relating to Meritorious Service Medal and Service Medal) and Dictionary, definition of “departmental officer”

Omit “the Department” wherever occurring.

Insert instead “Corrective Services NSW”.

[13] Clauses 200 (b) and 210 (a)

Omit “departmental” wherever occurring.

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[14] Clause 324 Order of ranking of correctional and other officers

Insert “and Principal Industries Officer (Level 1)” after “Manager of Industries (Level 1)” in clause 324 (2).

[15] Clause 324 (2)

Insert “and Principal Industries Officer (Level 2)” after “Manager of Industries (Level 2)”.