



New South Wales

Crimes (Administration of Sentences) Amendment (Miscellaneous) Regulation 2022

under the

Crimes (Administration of Sentences) Act 1999

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Crimes (Administration of Sentences) Act 1999*.

GEOFFREY LEE, MP
Minister for Corrections

Explanatory note

The objects of this Regulation are to—

- (a) provide for approval processes to allow the use of devices by inmates for particular purposes, and requirements for using the devices, and
- (b) allow the monitoring and recording of telephone calls involving inmates, and
- (c) enable the sharing of information to assist with applications for Commonwealth post-sentence supervision or detention orders, and
- (d) authorise the use of biometric identification systems for persons under 18 years.

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Crimes (Administration of Sentences) Act 1999

1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) Amendment (Miscellaneous) Regulation 2022*.

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 2014

[1] Clause 3 Interpretation

Omit the definition of *legal practitioner* from clause 3(1). Insert instead—

legal practitioner means an Australian legal practitioner within the meaning of the *Legal Profession Uniform Law (NSW)*.

[2] Clause 116 Additional requirements for correspondence from extreme high risk restricted inmates and national security interest inmates

Insert after section 116(2)—

- (3) An extreme high risk restricted inmate or a national security interest inmate must have the written approval of the Commissioner to send a letter or parcel, unless the letter or parcel is addressed to an exempt body or an exempt person.

Note— Failure of an inmate to comply with this subclause is a correctional centre offence.

[3] Clause 119B

Insert after clause 119A—

119B Monitoring or recording telephone calls

- (1) For the Act, section 79(1)(j), a telephone call made or received by an inmate may be monitored or recorded, unless a party to the telephone call with the inmate is—

- (a) an exempt body, or
(b) an exempt person.

- (2) The parties to a telephone call made or received by an inmate must, if practicable, be informed that the telephone call may be monitored or recorded.

- (3) A monitored or recorded telephone call may be transcribed, downloaded, listened to or copied.

[4] Clause 121 Possession of cameras, video or audio recorders

Omit “clause” from the note. Insert instead “subclause”.

[5] Clause 121(2)

Insert at the end of clause 121—

- (2) This clause does not apply to a camera, or video or audio recording equipment, that is part of a provided device within the meaning of Division 7A.

[6] Clause 122 Use or possession of mobile phones

Insert “, without reasonable excuse,” after “not”.

[7] Part 5, Division 7A

Insert after Part 5, Division 7—

Division 7A Use of devices by inmates—the Act, s 79

Subdivision 1 Preliminary

122A Definitions

In this Division—

approved recipient—see clause 122I(1).

AVL visit means a visit by audio visual link.

provided device means an electronic device provided to, or that may be accessed by, an inmate for use under this Division.

regulated activity means the following—

- (a) undertaking AVL visits,
- (b) making telephone calls,
- (c) sending and receiving messages,
- (d) keeping legal documents,
- (e) undertaking educational, criminogenic and developmental programs,
- (f) purchasing food and checking an account balance,
- (g) accessing books and other entertainment.

122B Approval of inmates to use provided devices

- (1) The Commissioner may give an approval to—
 - (a) an inmate to use a provided device, or
 - (b) a class of inmates who may use provided devices.
- (2) If the approval to use a provided device is given in relation to a regulated activity, the approval must specify the regulated activity for which the device may be used.
- (3) The approval may be subject to conditions, including a condition—
 - (a) limiting the purposes for which the provided device may be used, or
 - (b) about the times or intervals the device may be used.
- (4) The Commissioner may—
 - (a) cancel an approval, or
 - (b) vary the conditions of an approval.

Subdivision 2 AVL visits

122C AVL visits permitted by Commissioner

The Commissioner may permit a person to undertake an AVL visit with an inmate.

122D Approval of visitors to extreme high risk restricted inmates and national security interest inmates

- (1) A person may undertake an AVL visit with an extreme high risk restricted inmate or a national security interest inmate only if the person has been approved by the Commissioner.

- (2) The Commissioner may require a person, including a legal practitioner, to undergo a criminal record check before permitting the person to undertake an AVL visit if the visit is to—
 - (a) an extreme high risk restricted inmate, or
 - (b) a national security interest inmate.
- (3) The Commissioner may, on the basis of a criminal record check, refuse to approve a person for the AVL visit.
- (4) The Commissioner may revoke the approval of a person.

122E Procedure for AVL visits

- (1) An inmate must use a provided device for an AVL visit.
- (2) An AVL visit must be made at a time authorised by the Commissioner.
- (3) The Commissioner may refuse to permit an AVL visit with an inmate if the Commissioner reasonably believes the visit could—
 - (a) prejudice the good order and security of a correctional centre, or
 - (b) constitute a threat to the personal security of a person.
- (4) An AVL visit may take place within sight of a correctional officer.
- (5) An AVL visit may be monitored or recorded, unless a party to the visit is—
 - (a) an exempt body, or
 - (b) an exempt person.
- (6) The parties to an AVL visit must, if practicable, be informed that the visit may be monitored or recorded.
- (7) A monitored or recorded AVL visit may be transcribed, downloaded, listened to or copied.

122F Termination of AVL visits

- (1) An authorised officer may terminate an AVL visit, including an AVL visit with a person approved by the Commissioner under clause 122D, if the authorised officer is of the opinion that—
 - (a) the visitor has contravened a provision of the Act or this Regulation, or
 - (b) the visitor, or inmate who is part of the visit, is or has been acting in a threatening, offensive, indecent, obscene, abusive or improper way, or
 - (c) the continuation of the visit would prejudice the good order and security of the correctional centre at which the inmate is located, or
 - (d) it is in the interests of the visitor, being a visitor who is less than 18 years of age, to terminate the visit, or

Example— An authorised officer may terminate an AVL visit with a child who is visiting an inmate convicted of a sexual offence if the Commissioner is of the opinion that it is necessary for the protection of the child.

 - (e) a person who has not been approved by the Commissioner under clause 122D is part of the visit.
- (2) If an AVL visit is terminated under this clause, the authorised officer must—
 - (a) if the authorised officer is not the governor—give written notice of the termination to the governor, or
 - (b) if the authorised officer is the governor—give written notice of the termination to the Commissioner.

- (3) The governor must give a copy of the written notice given under subclause (2)(a) to the Commissioner.

122G AVL visits to extreme high risk restricted inmates

- (1) An AVL visit with an extreme high risk restricted inmate may take place within the hearing of a correctional officer.
- (2) All communications during an AVL visit with an extreme high risk restricted inmate must be conducted in—
- (a) English, or
 - (b) another language approved by the Commissioner.
- (3) If communications are conducted in a language other than English, the AVL visit must include, or take place within the hearing of, an interpreter approved by the Commissioner.
- (4) Subclauses (1) and (3) do not apply to an AVL visit between an inmate and the inmate's legal practitioner.

122H Records about AVL visits

The Commissioner must keep a record of the following for each AVL visit—

- (a) the date of the visit,
- (b) the name of the inmate who attended the visit,
- (c) the details of each party to the visit,
- (d) the relationship between each party to the visit and the inmate,
- (e) the duration of the visit,
- (f) the purpose of the visit and, if appropriate, the authority for the visit,
- (g) if a correctional officer supervised the visit—the name of the correctional officer,
- (h) if the visit was terminated by a correctional officer—
 - (i) the fact the visit was terminated, and
 - (ii) the reason for the termination.

Subdivision 3 Other regulated activities

122I Sending and receiving messages using provided device

- (1) The Commissioner may approve a person to send messages to, and receive messages from, an inmate (an *approved recipient*).
- (2) The Commissioner may refuse to approve a person as an approved recipient if the Commissioner reasonably believes that messages sent to or received by the person could—
- (a) prejudice the good order and security of a correctional centre, or
 - (b) constitute a threat to the personal security of a person.
- (3) An inmate may use a provided device to send messages to, and receive messages from, an approved recipient.
- (4) An inmate must not use a provided device to send messages to, or receive messages from, an approved recipient who is a legal practitioner for the purposes of transacting legal business or in relation to the inmate's legal matters.

- (5) A message sent to or by an inmate using an approved device may be read by an authorised officer.
- (6) The Commissioner may cancel an approved recipient's approval if an authorised officer is of the opinion that a message sent to, or received from, the approved recipient, to or from the inmate, using a provided device, is threatening, offensive, indecent, obscene, abusive or improper.

122J Arrangements for use of devices in relation to legal documents

- (1) An inmate may use a provided device to store, access or read a document or other recorded material that is provided to the inmate by the inmate's legal practitioner for the purpose of discussing or transacting legal business (a *legal document*).
- (2) An authorised officer may inspect or examine, but not read, a legal document stored on a provided device.
- (3) If a provided device that stores, or is used to access, a legal document is taken or removed from an inmate, Corrective Services NSW must securely store, or ensure that access is limited to, the legal document on the device in a way that ensures no person other than the inmate to whom the legal document was provided is able to access the legal document.

Subdivision 4 Compliance

122K Search of provided device

- (1) A correctional officer or a departmental officer may search a provided device to ensure compliance with—
 - (a) the approval for the inmate to use the device, and
 - (b) the requirements set out in this Division.
- (2) A correctional officer or a departmental officer may do the following—
 - (a) inspect, examine or read a document or file stored on or accessible through, the provided device,
 - (b) request the assistance of a law enforcement agency to forensically examine a provided device.
- (3) If a document or file stored on the device does not comply with the requirements set out in this Division, or is kept contrary to the inmate's approval, the officer may do the following—
 - (a) copy the document or file to another computer or device,
 - (b) delete the document or file from the provided device,
 - (c) seize the device and keep the document or file on the provided device.
- (4) This clause is subject to clause 122J(2).

122L Misuse of provided device

An inmate must not use a provided device—

- (a) in contravention of a condition of the inmate's approval, or
- (b) if the device is approved for a regulated activity—
 - (i) for a regulated activity other than the regulated activity specified in the inmate's approval to use the device, or
 - (ii) contrary to requirements under Subdivisions 2 or 3 for the regulated activity specified in the inmate's approval.

Note— Failure of an inmate to comply with this clause is a correctional centre offence.

Subdivision 5 Miscellaneous

122M Purchase of access to device for certain purposes

- (1) For the Act, section 79(1)(a), the governor of a correctional centre may permit an inmate to purchase access to a provided device to do the following—
 - (a) make or receive a telephone call,
 - (b) undertake an AVL visit,
 - (c) send messages to, and receive messages from, an approved recipient, in the inmate’s cell.
- (2) An inmate must not purchase access to the device unless the inmate is approved to use a provided device under this Division for the regulated activity for which the inmate is purchasing the access.

[8] Clause 320 Operation of biometric identification system in correctional centres

Omit clause 320(5).

[9] Clause 321 Privacy and security safeguards

Insert “other than a database kept for the purposes of tracking radiation dosage from an X-ray scanning device,” after “NSW,” in clause 321(1)(b).

[10] Clause 326 Authority to disclose certain information

Insert “the Commonwealth or” after “scheme of” in clause 326(n).

[11] Clause 326(o)

Insert after clause 326(n)—

- (o) facilitating or assisting the Australian Federal Police in the making of an application for a control order or a preventative detention order under the *Criminal Code Act 1995* of the Commonwealth.

[12] Schedule 2 Correctional centre offences

Insert in appropriate order in Schedule 2—

Clause 116(3)	Extreme high risk restricted inmate or national security interest inmate sending letter or parcel without approval
Clause 122L	Misuse of provided device