

# Crimes (Administration of Sentences) Regulation 2014

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New South Wales

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# Crimes (Administration of Sentences) Regulation 2014



New South Wales

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# Crimes (Administration of Sentences) Regulation 2014



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) Regulation 2014*.

### 2 Commencement

This Regulation commences on 1 September 2014 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Crimes (Administration of Sentences) Regulation 2008*, which is repealed on 1 September 2014 by section 10(2) of the *Subordinate Legislation Act 1989*.

### 3 Interpretation

(1) In this Regulation—

**accredited analytical laboratory** means a laboratory that—

- (a) is accredited as an analytical laboratory by an entity authorised by the Commonwealth to accredit analytical laboratories, and
- (b) is approved for the purposes of this Regulation by the Commissioner.

**accredited chaplain** means a minister of religion who is accredited as a chaplain under clause 63.

**analyst** means—

- (a) an analyst within the meaning of Schedule 3 to the *Road Transport Act 2013*, or
- (b) a person employed by the owner or operator of an accredited analytical laboratory as an analyst.

**approved** means approved by the Minister (in relation to an approved form) or by the Commissioner (in relation to anything else that requires approval).

**armed post** means an area, within a correctional centre, at which an armed correctional officer is regularly stationed.

**authorised officer**, in relation to a function of the governor of a correctional centre, means the governor or a correctional officer authorised by the governor to exercise the function.

**breath test** means a test for the purpose of indicating the concentration of alcohol present in a person's breath or blood.

**case plan**, in relation to an offender, means a plan for the management of the offender that includes provisions that indicate the development programs in which the offender should be encouraged to participate and the services that the offender should be encouraged to make use of, and the offender's obligations in relation to the programs and services.

**cell** includes any room or enclosed space in which an inmate is accommodated.

**Civil Chaplaincies Advisory Committee** means the committee, made up of representatives from various religious organisations, that liaises between the religious organisations and government departments in matters of chaplaincy in correctional centres.

**civil inmate** means an inmate who is being held in custody otherwise than because of a criminal offence.

**Commissioner's instructions** means instructions issued by the Commissioner under section 235B of the Act.

**Commonwealth Ombudsman** means the Commonwealth Ombudsman appointed under section 21(1) of the [Ombudsman Act 1976](#) of the Commonwealth.

**contact visit** means a visit to an inmate in which the inmate and the visitor are permitted physical contact with each other.

**correctional centre** includes a correctional complex.

**correctional centre armoury** means an armoury for the storage of firearms.

**correctional centre offence** has the same meaning as it has in Division 6 of Part 2 of the Act.

**Note—**

See clauses 127 and 128 for the declaration of correctional centre offences for the purposes of Division 6 of Part 2 of the Act.

**departmental officer** means a Public Service employee, other than a correctional officer, employed in Corrective Services NSW.

**development program** has the same meaning as it has in Part 7 of the *Crimes (Sentencing Procedure) Act 1999*.

**drug** means—

- (a) a prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
- (b) a substance declared to be a drug under subclause (3).

**drug test sample**, in relation to a person, means a sample of the person's breath, urine or oral fluid.

**electronic monitoring officer** means any person who is employed for the purpose of monitoring offenders who are subject to electronic monitoring.

**escape-risk classification** means a classification under clause 14.

**Ethics Committee** means the Ethics Committee established under clause 182.

**exempt body** means—

- (a) the Ombudsman, the Judicial Commission, the New South Wales Crime Commission, the Law Enforcement Conduct Commission, the Anti-Discrimination Board, the Civil and Administrative Tribunal, the Independent Commission Against Corruption, the Inspector of Custodial Services, the Privacy Commissioner, the Information Commissioner, the Legal Aid Commission, the Legal Services Commissioner or the Legal Services Tribunal, or
- (b) the Commonwealth Ombudsman, the Australian Human Rights Commission or the Australian Crime Commission.

**exempt person** means a Member of Parliament, a legal practitioner or a police officer.

**extreme high risk restricted inmate** means an inmate who is designated as an extreme high risk restricted inmate under clause 15.

**extreme high security inmate** means an inmate who is designated as an extreme high security inmate under clause 15.

**force** includes the threat to use force and the carriage and use of restraining equipment.

**government official** means a person employed in the service of the Crown, and includes a police officer.

**high risk offender** has the same meaning as it has in section 271A of the Act.

**high security, extreme high security or extreme high risk restricted designation** means a designation under clause 15.

**high security inmate** means an inmate who is designated as a high security inmate under clause 15.

**intensive correction offender** means a person in respect of whom an intensive correction order is in force.

**legal practitioner** means an Australian legal practitioner within the meaning of the [Legal Profession Act 2004](#).

**letter** includes any card, telegram, document or other similar form of written communication, whether or not contained in a parcel, and includes an envelope containing any of those things, but does not include a fax transmission.

**minister of religion**, in relation to a religious organisation, means a priest, rabbi, imam or other person appointed or authorised by the appropriate authority for the organisation to minister to its members and to carry out other religious duties.

**national security interest inmate** means an inmate who is designated as a national security interest inmate under clause 15.

**nominated officer**, in relation to a correctional centre, means—

- (a) the principal security officer, or
- (b) the governor of the centre, or
- (c) any correctional officer or departmental officer appointed by the principal security officer or by the governor of the centre to exercise a function under this Regulation as a nominated officer.

**non-contact visit** means a visit to an inmate in which the visit takes place in an environment in which physical contact between the visitor and the inmate is not permitted.

**nursing officer** means a registered nurse employed by Justice Health and Forensic Mental Health Network.

**parcel** means any parcel, package or other similar article, and includes any parcel or package containing any book, newspaper, magazine or other similar printed material.

**prescribed CSNSW officer**, in relation to a provision of this Regulation, means—

- (a) the Commissioner, or
- (b) a correctional officer or departmental officer authorised by the Commissioner to exercise the functions of a prescribed CSNSW officer for the purposes of the

provision.

**prescribed health officer**, in relation to a provision of this Regulation, means—

- (a) the Chief Executive, Justice Health and Forensic Mental Health Network, or
- (b) a medical officer or other member of staff of Justice Health and Forensic Mental Health Network authorised by the Chief Executive, Justice Health and Forensic Mental Health Network, to exercise the functions of a prescribed health officer for the purposes of the provision.

**principal security officer** means the person appointed by the Commissioner to be the principal security officer for the purposes of this Regulation.

**prohibited drug** has the same meaning as it has in the [Drug Misuse and Trafficking Act 1985](#).

**prohibited goods** means—

- (a) money, or
- (b) anything that, in the opinion of a nominated officer, is likely to prejudice the good order and security of a correctional centre, or
- (c) any threatening, offensive, indecent, obscene or abusive written or pictorial matter, or
- (d) any offensive, indecent or obscene article, or
- (e) anything that could constitute a risk to national security (for example, because of a perceived risk that it may be used in connection with terrorist activities), 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.

**restraining equipment** means equipment of the kind referred to in clause 132.

**restricted associate**, of an inmate, means a person with whom the inmate has been directed not to associate or make contact under an interim supervision order or extended supervision order (within the meaning of the [Crimes \(High Risk Offenders\) Act 2006](#) or the [Terrorism \(High Risk Offenders\) Act 2017](#)) made in respect of the inmate, but only if—

- (a) the order is suspended (or the inmate's obligations under the order are suspended), or
- (b) the order expired because a continuing detention order (that is still in force) was made in respect of the inmate, or

(c) the order has been made but is yet to commence.

**Note—**

See sections 10(2) and 18D of the *Crimes (High Risk Offenders) Act 2006* for the circumstances in which extended supervision orders expire or are suspended. See also sections 26 and 47 of the *Terrorism (High Risk Offenders) Act 2017*.

**senior officer**, in relation to Part 19, means a correctional officer who is holding office or acting in a rank that is of or above the rank of Senior Correctional Officer.

**sentencing court's comments**, in relation to an inmate, means any recommendation, observation or expression of opinion made by the sentencing court in relation to the inmate's sentence when sentence is originally or finally imposed.

**the Act** means the *Crimes (Administration of Sentences) Act 1999*.

**unconvicted inmate** means an inmate who is not a convicted inmate or a civil inmate.

**visitor** means a visitor to a correctional centre or to a particular person within a correctional centre, and includes any person who comes onto the premises of a correctional centre, whether by request or otherwise, other than in the performance of his or her functions under the Act or this Regulation.

**Note—**

Tradespersons and media personnel are examples of visitors.

**work site**, in relation to an offender under Part 10 or 13, means a place where the offender performs, or is required to perform, community service work (not involving participation in personal development, educational or other programs).

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) For the purposes of this Regulation—

- (a) a person who has a thing in his or her custody or under his or her control is taken to have the thing in his or her possession, and
- (b) a correctional officer who is temporarily relieving another correctional officer at a post is taken to be stationed at the post.

(3) For the purposes of the Act, each of the following substances is declared to be a drug—

- (a) a substance listed in Schedule 2, 3 or 4 to the Poisons List under the *Poisons and Therapeutic Goods Act 1966*,

(b) any derivative of—

(i) a prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*, or

(ii) a substance referred to in paragraph (a),

(c) any mixture containing a substance or derivative referred to in paragraph (a) or (b).

(3A) A reference in this Regulation to a community corrections officer is, where the offender is subject to supervision by a juvenile justice officer, taken to be a reference to a juvenile justice officer within the meaning of the *Children (Detention Centres) Act 1987*.

**Note—**

Juvenile justice officers are referred to in certain provisions of the *Crimes (Sentencing Procedure) Act 1999* (see sections 89–91 and 99–100) and the *Crimes (Administration of Sentences) Act 1999* (see sections 107E and 108E).

(4) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Admission procedures for correctional centres**

### **Division 1 Recording and providing information**

#### **4 Information to be recorded in relation to inmates**

(1) As soon as practicable after an inmate is received into a correctional centre, there must be recorded in relation to the inmate—

(a) the information referred to in Schedule 1 that is relevant to the inmate, and

(b) any other information the Commissioner considers appropriate.

(2) An inmate must not give any information for the purposes of this clause knowing that it is false or misleading in a material particular.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

#### **5 Inmates to be notified of rights and obligations**

As soon as practicable after an inmate is first received into a correctional centre, the governor must ensure the inmate is informed of the following—

(a) the correctional centre rules (that is, the terms of any general directions given under Part 2 of the Act or under Parts 2–9 of this Regulation),

(b) the inmate's obligations relating to discipline and conduct,

- (c) the inmate's rights of legal representation and appeal in relation to proceedings under this Regulation,
- (d) the case management process,
- (e) the authorised methods of seeking information and making complaints,
- (f) the role of an Official Visitor,
- (g) the functions of the Review Council in relation to the segregation and protective custody of inmates,
- (h) any other matter necessary to enable the inmate to understand the inmate's rights and obligations and adapt to living in the centre.

#### **6 Information for inmates who are nationals of other countries**

- (1) As soon as practicable after an inmate who is a national of another country is received into a correctional centre, the governor must ensure the inmate is informed that the diplomatic or consular representative of that country will be informed of the inmate's imprisonment if the inmate makes a written application for that purpose.
- (2) If the inmate makes the application, the governor must inform the diplomatic or consular representative without delay.

### **Division 2 Surrender of, and dealing with, property**

#### **7 Surrender of property by inmates**

On being received into a correctional centre, an inmate must surrender to an authorised officer all property that is then in the inmate's possession.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **8 Delivery of property by police and other persons**

If, at the time of an inmate's reception into a correctional centre, any of the inmate's property is brought to the centre by—

- (a) a police officer or correctional officer, or
- (b) any other person of a class specified by the Commissioner,

that property is to be delivered to the governor.

#### **9 Dealing with property surrendered on reception**

- (1) On receiving property surrendered or delivered in connection with an inmate's reception into a correctional centre, the governor must determine the items of



property that may, and may not, be retained at the centre.

- (2) Property that the governor determines may be retained at a correctional centre—
  - (a) may be returned to the inmate for use in the centre unless to do so would, in the governor's opinion, constitute a security or safety risk, or
  - (b) may be retained by the governor for return to the inmate on the inmate's release from custody.
- (3) Property that the governor determines may not be retained at a correctional centre is to be made available for collection by the person nominated by the inmate, and the nominated person is to be notified that the property is available for collection and should be collected within the next 30 days.
- (4) If the inmate fails to nominate a person to collect the property, or if the nominated person fails to collect the property within 30 days after being notified of its availability for collection—
  - (a) the property may be disposed of in the way the governor considers appropriate, and
  - (b) if the property is sold, the proceeds of sale are to be held to the credit of the inmate.
- (5) Despite any other provision of this clause—
  - (a) any money surrendered by an inmate is to be held to the credit of the inmate, and
  - (b) any unhygienic or infectious clothing surrendered by an inmate is to be destroyed if the governor is satisfied that its value is less than the cost of getting it cleaned.

## **10 Property records**

- (1) The governor of a correctional centre must ensure a record is kept of all property surrendered or delivered in connection with an inmate's reception into the centre.
- (2) The record must contain the following information—
  - (a) a description of the property,
  - (b) the date on which it was received,
  - (c) whether it was retained, collected or disposed of,
  - (d) if the property was collected—
    - (i) the date on which it was collected, and
    - (ii) the name, address and signature of the person who collected it,

- (e) if the property was disposed of—
  - (i) the date on which it was disposed of, and
  - (ii) the way in which it was disposed of, and
  - (iii) if it was sold, the amount for which it was sold,
- (f) any other incidental particulars.

## **Part 3 Classification, placement and case management of inmates**

### **Division 1 Classification and designation of inmates**

#### **11 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 under clause 12, 13 or 14 is to be reviewed at least once every 12 months and at the other times the Commissioner determines.

#### **12 Classification of male inmates**

- (1) Each male inmate is to be classified in one of the following categories for the purposes of security—

**Category AA**, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

**Category A1**, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to good order and security and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

**Category A2**, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.

**Category B**, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier.

**Category C1**, being the category of inmates who, in the opinion of the Commissioner, should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.

**Category C2**, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times but who need some level of supervision by a correctional officer or some other person authorised by the Commissioner.

**Category C3**, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised.

- (2) Subject to clause 17, the Commissioner may at any time vary or revoke a classification under this clause.
- (3) Male inmates who are classified in Category AA are prescribed to be serious offenders for the purposes of paragraph (f) of the definition of **serious offender** in section 3(1) of the Act.

### 13 Classification of female inmates

- (1) Each female inmate is to be classified in one of the following categories for the purposes of security—

**Category 5**, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

**Category 4**, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier that includes electronic surveillance equipment.

**Category 3**, being the category of inmates who, in the opinion of the Commissioner, should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.

**Category 2**, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times but who need some level of supervision by a correctional officer or some other person authorised by the Commissioner.

**Category 1**, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised.

- (2) Subject to clause 17, the Commissioner may at any time vary or revoke a classification under this clause.

- (3) Female inmates who are classified in Category 5 are prescribed to be serious offenders for the purposes of paragraph (f) of the definition of **serious offender** in section 3(1) of the Act.

#### **14 Escape-risk classifications**

- (1) Each inmate (male or female) who commits an escape offence is, following the commission of the offence, to be classified in one of the following categories—

**Category E1**, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to security and should at all times be confined—

- (a) in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment, or
- (b) by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.

**Category E2**, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier.

- (2) For the purposes of subclause (1), a person **commits an escape offence** if, in New South Wales or elsewhere, the person engages in behaviour that, whether or not the person is prosecuted, constitutes—
  - (a) an offence of escaping from lawful custody, or
  - (b) an offence of attempting or conspiring to escape from lawful custody, under the laws of the place where the behaviour occurs.
- (3) An inmate's classification under this clause overrides the inmate's classification under clause 12 or 13.
- (4) Despite subclause (3), the Commissioner may determine that an inmate not be classified under this clause if the inmate was under the age of 18 years when the escape offence was committed.
- (5) Subject to clause 17, the Commissioner may at any time vary or revoke a classification under this clause.

#### **14A Life imprisonment classification**

- (1) An inmate (male or female) who has little or no prospect of release must be classified for the purposes of security in **Category Life**.
- (2) An inmate has **little or no prospect of release** if the inmate—
  - (a) is serving a sentence of imprisonment for life for the term of the inmate's natural life, or

(b) is serving an existing life sentence, and is the subject of a non-release recommendation, within the meaning of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*.

(3) An inmate who has little or no prospect of release cannot be classified under clause 12, 13 or 14.

(4) An inmate who, immediately before the commencement of this clause, was classified under clause 12, 13 or 14 and has little or no prospect of release is taken to be reclassified in Category Life.

**15 Designation of high security, extreme high security, extreme high risk restricted and national security interest inmates**

(1) The Commissioner may designate an inmate as a high security inmate if of the opinion that the inmate constitutes—

(a) a danger to other people, or

(b) a threat to good order and security.

(2) The Commissioner may designate an inmate as an extreme high security inmate if of the opinion that the inmate constitutes—

(a) an extreme danger to other people, or

(b) an extreme threat to good order and security.

(3) 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.

(3A) The Commissioner may designate an inmate as a national security interest inmate if of the opinion that 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.

(4) Subject to clause 17, the Commissioner may at any time vary or revoke a designation under this clause.

(5) Extreme high risk restricted inmates are prescribed to be serious offenders for the

purposes of paragraph (f) of the definition of **serious offender** in section 3(1) of the Act.

**16 Management of high security, extreme high security, extreme high risk restricted and national security interest inmates**

The Commissioner may make determinations with respect to the following—

- (a) the placement in correctional centres of high security, extreme high security, extreme high risk restricted and national security interest inmates,
- (b) the movement of high security, extreme high security, extreme high risk restricted and national security interest inmates for any purpose,
- (c) any additional security arrangements to be imposed in respect of high security, extreme high security, extreme high risk restricted and national security interest inmates,
- (d) case plans for high security, extreme high security, extreme high risk restricted and national security interest inmates,
- (e) any other matter that is relevant to the management of high security, extreme high security, extreme high risk restricted and national security interest inmates.

**17 Variation of classification and designation of certain inmates**

- (1) The Commissioner must not, without seeking and considering the recommendations of the Review Council—
  - (a) cause an inmate who has an escape-risk classification to cease to have an escape-risk classification, or
  - (b) cause an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation—
    - (i) to have that designation varied to another designation, or
    - (ii) to cease to have a designation, or
  - (c) cause a serious offender to have his or her classification changed.
- (2) In the case of an inmate who has an escape-risk classification, the Review Council—
  - (a) is not to make a recommendation for the purposes of subclause (1)(a) unless it is satisfied that there are special circumstances that, in the opinion of the Review Council, justify the reclassification, and
  - (b) need not consider an application made to it by an inmate for the purposes of subclause (1)(a) if, on the face of the application and any document submitted in support of it, the Review Council considers that the application—

- (i) is not substantially different from a previous application, made by or on behalf of the same inmate, that it has rejected, or
  - (ii) is frivolous or vexatious.
- (3) If the Commissioner varies the classification or designation of an inmate under this clause in a way that is contrary to the recommendations of the Review Council, the Commissioner must ensure notice of that fact is given to the Review Council.
- (4) Despite subclause (1)(c), the Commissioner may, if the Commissioner considers that there are exceptional circumstances that justify doing so, cause a serious offender to have his or her classification changed without seeking the recommendations of the Review Council.
- (5) The Commissioner must notify the Review Council of any decision made under subclause (4).
- (6) The Review Council may recommend to the Commissioner that the Commissioner reconsider a decision made under subclause (4).

### **18 High security classification of inmates for purposes of interstate leave permits**

A male inmate classified as Category AA, A1, A2, E1 or E2, and a female inmate classified as Category 5, 4, E1 or E2, has a high security classification for the purposes of section 29 of the Act.

### **19 Information to be considered for classification purposes**

For the purposes of making a decision with respect to a person's classification under this Division, consideration must be given to—

- (a) any advice received from the NSW Police Force or from any other public authority (whether of this or any other State or Territory or of the Commonwealth) established for law enforcement, security or anti-terrorist purposes, and
- (b) whether or not the inmate is likely to be removed from Australia.

## **Division 2 Placement of inmates**

### **20 Placement of inmates**

- (1) In determining 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,
    - (a1) if the inmate's classification is Category Life, that such inmates should be confined at all times by a secure physical barrier unless extraordinary circumstances exist,

- (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 under any conditions of bail or parole or any other conditions imposed by a court order (including an extended supervision order under the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*),
  - (h) any assessment that has been made (whether by an employee 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
    - (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 proximity of the correctional centre to the inmate's family members,
  - (k) the availability of resources and appropriate programs and services at the correctional centre in which the inmate is to be held.
- (2) Subclause (1) does not limit the matters that the Commissioner may have regard to in making the determination.
- (3) An inmate's placement in a correctional centre is to be reviewed at least once every 12 months and at the other times the Commissioner determines.

## **21 Governor's report about inmates' placement**

- (1) If the governor of a correctional centre considers that an inmate in the centre, or an inmate transferred, or proposed to be transferred, to the centre, is unsuitable for placement or for continued placement in the centre, the governor must ensure a report with respect to the placement is sent to—
- (a) the Commissioner, and



(b) in the case of a report that relates to a serious offender, or an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation—the Review Council.

(2) The report must include the reasons why the inmate should not be placed, or continue to be placed, in the correctional centre.

## **22 Consideration of certain reports by Review Council**

(1) The Review Council is to review any report prepared by the governor of a correctional centre with respect to the placement, or continued placement, in the centre of an inmate who is a serious offender, or an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation.

(2) The Review Council may give the Commissioner any submissions in relation to the report that it considers appropriate.

## **23 Decision by Commissioner about inmate's placement**

(1) After considering—

(a) any report prepared by the governor of a correctional centre with respect to the placement, or continued placement, in the centre of an inmate, and

(b) in the case of an inmate who is a serious offender or an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation—any submissions by the Review Council in relation to the report,

the Commissioner must make a decision with respect to the inmate's placement, or continued placement, in the centre.

(2) The Commissioner is not bound to follow the recommendations in the report.

(3) If the Commissioner considers that there are urgent reasons for doing so, the Commissioner may make a decision with respect to the transfer of an inmate who is a serious offender or an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation without giving the Review Council an opportunity to make submissions.

(4) The Commissioner must notify the Review Council of any decision made under subclause (3).

(5) After considering the report prepared by the governor, the Review Council may recommend to the Commissioner that the Commissioner reconsider a decision made under subclause (3).

## **Division 3 Case plans for convicted inmates**

## 24 Case plans to be prepared for all convicted inmates

- (1) The Commissioner is to ensure that a case plan (an **initial case plan**) is prepared and adopted for each convicted inmate as soon as practicable 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 the other times 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 4 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 60.

## 25 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 in 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 4,
  - (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 because 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 (for example, 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 is required to have regard in determining the correctional centre in which an inmate is to be placed.

## **26 Departmental officers to prepare recommendations**

- (1) Recommendations with respect to an inmate's case plan are to be prepared by a departmental officer 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 27 within 21 days after being called on to prepare them.

## **27 Consideration of recommendations by departmental officers**

- (1) The recommendations prepared in accordance with clause 26 with respect to an inmate's case plan are to be reviewed by a departmental officer nominated by the Commissioner (the ***nominated review officer***).
- (2) The nominated review officer is to prepare a report on the recommendations.
- (3) The nominated review officer must take all reasonable steps to ensure that the report with respect to an inmate is submitted, within 28 days after the recommendations are prepared, to—
  - (a) the Commissioner, and
  - (b) in the case of a report that relates to a serious offender, or an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation—the Review Council.

## **28 Consideration of certain case plans by Review Council**

- (1) The Review Council is to review any report prepared in accordance with clause 27 in

relation to a serious offender, or an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation.

- (2) The Review Council may give the Commissioner any submissions in relation to the report that it considers appropriate.

### **29 Adoption of case plan by Commissioner**

- (1) After considering—
  - (a) the report prepared in accordance with clause 27 with respect to an inmate's case plan, and
  - (b) any advice by the Review Council in relation to the report,the Commissioner must adopt a case plan for the inmate.
- (2) The Commissioner is not bound to follow the recommendations in the report or the advice of the Review Council.

### **30 Linguistic and cultural factors to be considered**

- (1) On becoming aware that an inmate who is being interviewed for the purposes of this Part may be disadvantaged by linguistic or cultural factors, an interviewer must take all reasonable steps to ensure that the inmate has the assistance of a person who can act as an appropriate interpreter or provide appropriate cultural guidance.
- (2) The person need not be present at the interview so long as he or she is available to the inmate by telephone, closed-circuit television or other electronic means during the interview.
- (3) If the interviewer makes a report that assesses an inmate for the purposes of this Part, the interviewer—
  - (a) must take into consideration any linguistic or cultural factors that may disadvantage the inmate, and
  - (b) must refer in the report to the extent to which, in the interviewer's opinion, the factors are significant in relation to the assessment.

### **31 Case plans for high risk offenders**

- (1) This Division applies, with any necessary modifications, in respect of high risk offenders who are not inmates in the same way as it applies in respect of convicted inmates.
- (2) For that purpose—
  - (a) a reference to an inmate includes a reference to a high risk offender, and

- (b) a reference to the sentencing court includes a reference to the Supreme Court, and
- (c) clause 24(2) does not apply, and
- (d) clause 28 applies as if the high risk offender were a serious offender.

## **Division 4 Miscellaneous**

### **32 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 considers 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, the placement is reasonable having regard to the availability of accommodation for inmates in correctional centres within the State.

## **Part 4 Correctional centre routine**

### **Division 1 Separation and accommodation**

#### **33 Separation of different classes of inmates**

- (1) For the purposes of this clause, each inmate is to be included in one of the following classes—
  - (a) convicted inmate,
  - (b) unconvicted inmate,
  - (c) civil inmate,
  - (d) Commonwealth post sentence terrorism inmate,
  - (e) NSW post sentence inmate.
- (2) As far as practicable, inmates of a particular class are to be kept separate from inmates of another class.
- (3) Within each class, the Commissioner may direct that the following inmates be kept separate from other inmates—
  - (a) inmates who have not previously been imprisoned,
  - (b) inmates who would be at risk if not separated from other inmates,
  - (c) inmates who are forensic patients within the meaning of the *Mental Health Act 2007*,
  - (d) inmates who are detained under a preventative detention order within the meaning of Part 2A of the *Terrorism (Police Powers) Act 2002*,
  - (e) inmates who are imprisoned—
    - (i) under a warrant issued by the Commissioner of Fines Administration under section 87 of the *Fines Act 1996*, or
    - (ii) as fine defaulters under the laws of the Commonwealth or the Australian Capital Territory.

#### **34 Separation of sexes**

Female inmates must be kept separate from male inmates except in the circumstances and under the supervision that the Commissioner determines.

### **35 Separation for health reasons**

Inmates found or suspected to be in an infectious or verminous condition may be kept separate from other inmates.

### **36 Accommodation**

- (1) Each inmate of a correctional centre is to be housed in a cell or dormitory, by himself or herself or with one or more other inmates, as the governor or an authorised officer considers appropriate.
- (2) Each inmate must be provided with a separate bed and sufficient clean bedding to suit the climatic conditions.

## **Division 2 Hours of work and general correctional centre routine**

### **37 Hours of work and general routine**

- (1) The Commissioner is to determine the hours of work and general routine for each correctional centre.
- (2) The Commissioner may determine different hours of work and different general routines for different parts of a correctional centre.

### **38 Restriction on work that civil inmates and unconvicted inmates may be required to perform**

- (1) Civil inmates and unconvicted inmates are not to be required to work otherwise than as provided by this clause.
- (2) The governor of a correctional centre may require a civil inmate or unconvicted inmate to ensure that any yard or other section of the correctional centre that he or she uses is kept clean.
- (3) A civil inmate or unconvicted inmate must comply with any requirement under this clause.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

### **39 Inmates to comply with correctional centre routine**

An inmate must comply with the hours of work and general routine for the correctional centre or part of the correctional centre in which the inmate is detained.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **40 Inmates not to enter other cells**

An inmate must not enter a cell that has not been allocated for use by the inmate otherwise than—

- (a) with the permission of the governor or a correctional officer, or
- (b) in compliance with a direction given by the governor or a correctional officer.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **41 Calls to muster**

An inmate must immediately attend at any place designated by the governor, either generally or in a particular case, as a place for mustering inmates—

- (a) when required orally to do so by the governor or a correctional officer, or
- (b) when summoned by a bell, hooter, siren or whistle used for that purpose.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **42 Misuse of bells, hooters, sirens and whistles**

An inmate must not operate a bell, hooter, siren or whistle used—

- (a) for calling to muster, or
- (b) for giving notice of a fire or other emergency, or of a fire or other emergency drill, or
- (c) for giving notice of any other correctional centre routine,

unless the inmate is authorised to do so by the governor or a correctional officer or does so with other reasonable excuse.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **43 Avoidance of correctional centre routine**

An inmate must not pretend to be ill or injured for the purpose of avoiding the inmate's obligations under the Act and this Regulation.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **44 Delivery of articles to and from inmates**

- (1) Except as otherwise provided by this Part, an inmate must not deliver anything to or



receive anything from any other inmate.

- (2) With the approval of an authorised officer, an inmate may deliver an article to another inmate.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **45 Creation or possession of prohibited goods**

An inmate must not create, or have in his or her possession, prohibited goods.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **46 Searching of inmates and cells**

- (1) A correctional officer may, at the times the governor directs and at other times the correctional officer considers appropriate—
  - (a) search an inmate (including by means of a strip-search or the use of an electronic or X-ray scanning device), and
  - (b) search an inmate's cell and any property in the cell.
- (2) Except in the case of an emergency, an inmate must not be strip-searched by or in the presence of a person of the opposite sex.
- (3) The searching of an inmate and the inmate's cell must be conducted with due regard to dignity and self-respect and in as seemly a way as is consistent with the conduct of an effective search.
- (4) An inmate must not resist or impede the conduct of a search carried out under this clause.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

- (5) In this clause, **strip-search** means a search of a person or of articles in the possession of a person that may include—
  - (a) requiring the person to remove all of his or her clothes, and
  - (b) an examination of the person's body (but not of the person's body cavities) and of the clothes.

#### **47 Property to be kept tidy and orderly**

- (1) An inmate must keep his or her property tidy and orderly and in a way that does not impede a search of the inmate's cell.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

- (2) The quantity of property that an inmate keeps in his or her cell is not to exceed the quantity the governor may determine and, if it does, the governor may confiscate as much of the property as is necessary to reduce the excess.
- (3) Anything confiscated under this clause—
  - (a) is to be dealt with as if it had been surrendered on reception into a correctional centre, or
  - (b) is to be disposed of by the governor in a way that is reasonable in the circumstances, having regard to its nature.

**48 Books and other material**

- (1) An inmate may purchase—
  - (a) any book, newspaper or magazine, and
  - (b) any record, cassette, CD or DVD.
- (2) Despite subclause (1), the governor may refuse to allow an inmate to purchase, and may confiscate, a book, newspaper, magazine, record, cassette, CD or DVD if of the opinion that it contains—
  - (a) anything that, in the opinion of a nominated officer, is likely to prejudice the good order and security of the correctional centre, or
  - (b) any threatening, offensive, indecent, obscene or abusive written or pictorial matter, or
  - (c) any offensive, indecent or obscene article.
- (3) Also, the governor may confiscate any electronic device of an inmate if of the opinion that it contains—
  - (a) anything that, in the opinion of a nominated officer, is likely to prejudice the good order and security of the correctional centre, or
  - (b) any threatening, offensive, indecent, obscene or abusive written or pictorial matter, or
  - (c) any offensive, indecent or obscene article.
- (4) Anything confiscated under this clause—
  - (a) is to be dealt with as if it had been surrendered on reception into a correctional centre, or

- (b) is to be disposed of by the governor in a way that is reasonable in the circumstances, having regard to its nature.

#### **49 Transfer of property**

The property of an inmate who is transferred from one correctional centre to another is to be delivered to the governor of the new correctional centre, together with a copy of any record kept by the governor of the former correctional centre in relation to the property.

### **Division 3 Food**

#### **50 Diet**

- (1) An inmate must be supplied each day with food in accordance with a diet designed to provide a dietary intake generally in accordance with the recommended dietary intakes published by the National Health and Medical Research Council.
- (2) The diet must—
  - (a) be varied, and
  - (b) provide adequate amounts of each essential nutrient from basic foods, and
  - (c) be planned to ensure optimal nutritional health.
- (3) The diet of an inmate having special dietary needs is to be planned having regard to those needs.

#### **51 Complaints about correctional centre food**

- (1) An inmate wishing to complain about the quantity or quality of the food supplied by a correctional centre must do so promptly.
- (2) The inmate is responsible for substantiating the complaint.

#### **52 Purchase of food by inmates**

- (1) The governor of a correctional centre may permit an inmate—
  - (a) to purchase food available for purchase at the centre or outside the centre, or
  - (b) to arrange for the supply of food from outside the centre.
- (2) An inmate must not purchase food, or arrange for the supply of food from outside a correctional centre, unless permitted to do so under subclause (1).
- (3) An inmate must not receive or have in his or her possession any food other than food supplied by a correctional centre or food that he or she is permitted to purchase or be supplied with under this clause.

- (4) An inmate supplied with food from outside a correctional centre must ensure that none of it is received by another inmate.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

## **Division 4 Health and cleanliness**

### **53 Daily exercise**

- (1) Each inmate, other than an inmate who is confined to cell under section 53 or 56 of the Act, is to be allowed at least 2 hours each day for exercise in the open air.
- (2) Each inmate who is confined to cell under section 53 or 56 of the Act is to be allowed at least 1 hour each day for exercise in the open air.
- (3) An inmate's entitlement to exercise under this clause is subject to the practical limitations that may from time to time arise in connection with the administration of the correctional centre concerned.

### **54 Dental and optical treatment and artificial medical appliances**

Dental treatment, optical treatment and hearing aids and other artificial medical appliances are to be supplied to inmates in the way and to the extent the Chief Executive, Justice Health and Forensic Mental Health Network, determines.

### **55 Destruction of unhygienic property**

- (1) Any food, personal effects or articles of clothing belonging to an inmate at a correctional centre may be destroyed if the governor considers it necessary for the maintenance of hygiene.
- (2) Before any property is destroyed, the governor must, if practicable, ensure the inmate is informed of the proposed destruction and the reason for it.

### **56 Personal cleanliness**

An inmate must obey directions given by or with the authority of the governor, either generally or individually, in regard to washing, showering, bathing, shaving and hair cutting.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **57 Wearing of correctional centre clothing**

- (1) Unless otherwise authorised by the governor, an inmate must at all times wear the uniform clothing and footwear issued to the inmate, and must not at any time wear any other clothing.

(2) This clause does not apply to an inmate while attending court.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**58 Cleanliness of cells and their contents**

(1) An inmate must keep the inmate's accommodation, utensils, clothing, bedding and any other issued articles clean, tidy and in good order and in accordance with any directions given by a correctional officer.

(2) An inmate must not wilfully damage, destroy or deface any part of the correctional centre.

(3) An inmate must not dispose of, or wilfully alter, damage or destroy, any clothing, bedding or other article issued to the inmate.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**59 Condoms and dental dams**

(1) Condoms (together with plastic disposal bags) are to be made available free of charge in each correctional centre in which there are male inmates.

(2) Dental dams (together with plastic disposal bags) are to be made available free of charge in each correctional centre in which there are female inmates.

(3) An inmate must not obtain possession of any condom or dental dam otherwise than—

(a) from a dispensing machine installed in the correctional centre for use by inmates, or

(b) in accordance with other arrangements approved by the governor of the correctional centre.

(4) An inmate must not use a condom or dental dam otherwise than for the purpose of sexual activity.

(5) As soon as practicable after using a condom or dental dam, an inmate must dispose of it—

(a) by placing it in a plastic disposal bag, and

(b) by placing the plastic disposal bag in a domestic waste receptacle.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

## **Division 5 Inmate services and programs**

### **60 Inmate services and programs**

- (1) The Commissioner may provide an inmate with services and programs that—
  - (a) offer the inmate an opportunity to develop skills, behaviours and attitudes that lessen the likelihood of the inmate re-offending, or
  - (b) contribute to the inmate living in society after release from custody, or
  - (c) promote the health, safety and well-being of the inmate.
- (2) Without limiting subclause (1), the services and programs may include any of the following—
  - (a) welfare services,
  - (b) services for inmates who have disabilities,
  - (c) alcohol and other drug counselling services,
  - (d) psychological counselling services,
  - (e) literacy and numeracy programs,
  - (f) educational and vocational training programs, including the provision of libraries,
  - (g) pre-release and post-release programs to enable inmates to adapt to normal lawful community life,
  - (h) sports and recreational activities.
- (3) In exercising a function under this clause, the Commissioner must give special attention to—
  - (a) the needs of inmates who have low literacy or numeracy, and
  - (b) the needs of inmates who have a disability.
- (4) 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 3 of Part 3.

**Note—**

Case plans are generally required to be prepared for all convicted inmates under Division 3 of Part 3. 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.

- (5) Services and programs may be provided by correctional officers or by other persons approved by the Commissioner.

- (6) A person employed or otherwise engaged in providing a service or program—
  - (a) is subject to the directions of the Commissioner in respect of the nature and scope of the service or program and its method of delivery, and
  - (b) is subject to the directions of the governor in respect of any matter affecting the good order and security of the correctional centre.

### **61 Behaviour of inmates participating in services and programs**

While participating in a service or program provided under this Part, an inmate must comply with any lawful and reasonable direction of the person employed or otherwise engaged in the provision of the service or program.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **62 High risk offenders**

- (1) This Division applies, with any necessary modifications, in respect of high risk offenders who are not inmates in the same way as it applies in respect of inmates.
- (2) For that purpose, a reference to an inmate includes a reference to a high risk offender.

## **Division 6 Spiritual and pastoral care**

### **63 Accreditation of chaplains**

- (1) A minister of religion may not perform the functions of a chaplain in a correctional centre unless the minister—
  - (a) is accredited by the Commissioner in accordance with subclause (2), and
  - (b) is permitted by the appropriate authority for the religious organisation of which the minister is a member to work as a chaplain in the correctional centre.
- (2) The Commissioner may, by instrument in writing, accredit a minister of religion who has been endorsed by the Civil Chaplaincies Advisory Committee to work as a full-time, part-time or sessional chaplain to inmates, correctional officers and departmental officers at a correctional centre.
- (3) The Commissioner must not accredit a minister of religion unless the minister has undergone a criminal record check and been found by the Commissioner to be suitable to work as a chaplain in the correctional centre.
- (4) The Commissioner may, at any time, by instrument in writing, revoke an accreditation.
- (5) The Commissioner must give written notice of any revocation to the Civil Chaplaincies Advisory Committee.

#### **64 Privileges of accredited chaplains**

- (1) With the approval of the governor, an accredited chaplain—
  - (a) may, when visiting a correctional centre, be accompanied by assistants, whether ministers of religion or lay persons who are wholly or partly engaged in duties of a religious nature, and
  - (b) may arrange for inmates to be visited by persons suitably qualified in counselling, vocational guidance or other services, and
  - (c) may authorise, in writing, another minister of religion to act in his or her place during his or her absence.
- (2) A person who is authorised to act for an accredited chaplain is taken to be an accredited chaplain for the purposes of this Division.
- (3) An accredited chaplain is answerable to the Commissioner for the conduct of any assistant who accompanies the accredited chaplain when visiting a correctional centre.

#### **65 Responsibilities of accredited chaplains**

- (1) An accredited chaplain is responsible for the spiritual and pastoral care of inmates, correctional officers and departmental officers at the correctional centre to which he or she is accredited.
- (2) An accredited chaplain's responsibilities include—
  - (a) visiting inmates who are sick, injured, confined to cell or segregated from other inmates, and
  - (b) visiting inmates, or arranging for them to be visited by another minister of religion of the same denomination, in circumstances in which they are suffering from a potentially fatal illness or injury.

#### **66 Powers of accredited chaplains**

- (1) On Sundays or other recognised days of religious observance, and on other days the governor may permit, an accredited chaplain—
  - (a) may hold or conduct the rites, services or assemblies of the accredited chaplain's denomination, or
  - (b) with the permission of the governor, may hold or conduct combined services in association with ministers of religion of other denominations.
- (2) An accredited chaplain may minister to an inmate who is not of the accredited chaplain's denomination, but only with the consent of the inmate and, if an accredited



chaplain of the inmate's denomination has been appointed to the correctional centre, that accredited chaplain.

- (3) With the approval of the governor, an accredited chaplain may pursue matters the accredited chaplain considers to be in the interests of the welfare of inmates at the correctional centre to which he or she is accredited, and of their families.

#### **67 Access to inmates**

- (1) An accredited chaplain is entitled—
  - (a) to visit the correctional centre to which he or she is accredited at all reasonable times, but not so as to disturb the ordinary routine of the centre, and
  - (b) to have access to inmates of the chaplain's denomination for the purpose of private and confidential religious ministrations.
- (2) If no minister of religion of a particular denomination has been accredited in relation to a particular correctional centre, a minister of religion of that denomination may, with the approval of the governor of the centre—
  - (a) visit the centre, and
  - (b) have access to inmates of that denomination.
- (3) On request by an inmate belonging to a denomination for which no minister of religion has been accredited, the governor (after consultation with accredited chaplains) may arrange for the inmate to be visited by a minister of religion of that denomination.
- (4) A decision by the governor to grant a request under subclause (3) does not affect the number of visits and maximum number of visitors to which the inmate may be entitled under clauses 76 and 77.
- (5) A minister of religion is entitled to have access to an inmate under this clause beyond the hearing, but within the sight, of a correctional officer.
- (6) An inmate's objection to being visited by a minister of religion is to be fully respected.

#### **68 Participation of inmates in religious observances**

- (1) An inmate may attend the following rites, services and assemblies conducted at the correctional centre—
  - (a) rites, services or assemblies of the inmate's denomination,
  - (b) combined rites, services or assemblies conducted by ministers of religion of the inmate's denomination in association with ministers of religion of other denominations,

(c) with the approval of the governor, rites, services or assemblies of other denominations.

(2) Religious books, recognised objects of religious devotion and similar items belonging to an inmate are to be treated as approved personal property acquired with the permission of the governor.

## **69 Use of chapels**

(1) A correctional centre chapel or a part of a correctional centre chapel that is used for the conduct of rites, services or assemblies may be used for other purposes that are in keeping with the nature of the building, as may be determined by the governor after consultation with the relevant accredited chaplains.

(2) On request by an accredited chaplain, the governor of a correctional centre must make available—

(a) a suitable part of the centre as a correctional centre chapel for the conduct of rites, services or assemblies, and

(b) suitable facilities for the safekeeping of books and other objects used in connection with the conduct of rites, services or assemblies,

if no such correctional centre chapel or facilities currently exist.

(3) The governor of a correctional centre is to encourage inmates to use the correctional centre chapel for personal devotion, worship and meditation.

(4) An inmate must not desecrate or abuse any books or other objects used in connection with the rites, services or assemblies of a religious denomination.

### **Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

(5) A correctional officer or departmental officer must not damage any books or other objects used in connection with the rites, services or assemblies of a religious denomination, otherwise than in circumstances in which the damage is—

(a) unavoidable, and

(b) in the course of a search or of carrying out the officer's duties.

## **70 Accredited chaplains may advise committees**

(1) An accredited chaplain may, with the approval of the governor of the correctional centre to which he or she is accredited—

(a) attend a meeting of any committee concerned with the management of the centre, and

(b) at the meeting, offer advice in relation to the welfare of inmates.

(2) An accredited chaplain is not entitled to vote on any motion or proposal put before a committee or otherwise to participate in its decisions.

### **71 Accredited chaplaincy services generally**

(1) The accredited chaplains, in collaboration with the Commissioner and the appropriate religious authorities, may assist in—

(a) the development of community support for corrective services, and

(b) the development and extension of accredited chaplaincy services in correctional centres.

(2) In consultation with the accredited chaplains and appropriate religious authorities, the Commissioner must from time to time review the effectiveness of the accredited chaplaincy services in correctional centres.

### **72 Exclusion of ministers of religion on grounds of security**

The Commissioner may prohibit a particular minister of religion, or a minister of religion of a particular denomination, from visiting a correctional centre if of the opinion that it would be prejudicial to the good order and security of the centre to allow the visit.

### **73 Inmates' religious affiliation**

(1) An inmate who wishes to become a member of a religious denomination, or who wishes to change his or her religious denomination, is to give written notice of his or her wishes to the governor of the correctional centre—

(a) setting out the inmate's reasons for wishing to become a member of that denomination, and

(b) requesting any relevant records kept at the centre to be amended accordingly.

(2) If satisfied (after consultation with the relevant accredited chaplain) that the request is made in good faith, the governor must ensure the relevant records are amended in accordance with the request.

(3) For the purposes of this Part, an inmate is to be treated as belonging to the religious denomination, if any, that is for the time being shown in the relevant records in relation to the inmate.

(4) If asked to do so by an accredited chaplain, the governor must inform the chaplain of the names of all inmates at the correctional centre who are for the time being shown in the relevant records as belonging to the chaplain's denomination.

## **Part 5 Visits and communications**

### **Division 1 Visits to inmates**

#### **74 Visits generally**

The governor of a correctional centre may permit a person to visit the centre, either generally or for the purpose of seeing a particular inmate at the centre.

#### **75 Visiting hours**

- (1) The periods during which a person may visit a correctional centre are the periods determined by the Commissioner.
- (2) The governor of a correctional centre is to ensure that the visiting hours are clearly displayed on a notice outside the centre.
- (3) If it is not practicable for a person to visit during visiting hours, the governor may permit a visit outside those hours, subject to the convenience of the routine of the correctional centre.
- (4) A visit is to be permitted to continue for at least 30 minutes, unless it is terminated or would otherwise extend beyond visiting hours.

#### **76 Number of visits**

- (1) An unconvicted inmate may be visited once as soon as practicable after reception into a correctional centre and afterwards at least twice weekly.
- (2) A convicted inmate may be visited once as soon as practicable after conviction and afterwards at the intervals the governor determines.
- (3) However, an extreme high risk restricted inmate may be visited once a week only, or more often if the Commissioner so determines.
- (4) A civil inmate may be visited daily, as often and for so long as the governor determines.
- (5) The governor of a correctional centre may permit additional visits to an inmate, particularly in the case of an inmate who is dangerously ill.

#### **77 Maximum number of visitors**

- (1) Up to 4 visitors may be present with an inmate at the same time.
- (2) The governor of a correctional centre may permit additional visitors to be present with an inmate at the same time, particularly in the case of an inmate who is dangerously ill.

### **78 Visits by Commissioner and other officials**

- (1) The Commissioner may visit and must be admitted to a correctional centre at any time.
- (2) No other person may be admitted to a correctional centre without the prior authority of the Commissioner, except for the following persons—
  - (a) a correctional officer or departmental officer employed at the centre,
  - (b) the Minister or an Official Visitor for the centre,
  - (c) a member of the Review Council or of any committee of the Review Council,
  - (d) a Judge of the Supreme Court or District Court, a Magistrate or a coroner,
  - (e) a government official engaged on official duties,
  - (f) any person in the exercise of a power conferred by or under an Act (including a Commonwealth Act).

### **79 Inmates may refuse visits**

An inmate may refuse to receive a visitor, other than a government official engaged on official duties.

### **80 Inmates confined to cell not entitled to visits**

- (1) An inmate who is confined to cell is not entitled to be visited except in the case of—
  - (a) a visit to discuss or transact legal business, or
  - (b) a visit by a diplomatic or consular representative, or
  - (c) a visit by a field officer of the Aboriginal Legal Service (NSW/ACT) Limited or a similar organisation approved by the Commissioner, or
  - (d) a visit by a government official engaged on official duties, or
  - (e) a visit by an Official Visitor.
- (2) Despite subclause (1), the governor of a correctional centre may permit an inmate who is confined to cell to receive visits from the inmate's family and friends if, in the governor's opinion, it is appropriate to do so to avoid hardship (for example, if family or friends have travelled a long way to make the visit).

### **81 Record of visits**

- (1) The governor of a correctional centre must ensure a record is kept of all visits to inmates at the centre.

- (2) The record must contain the following particulars in relation to each visit—
- (a) the date of the visit,
  - (b) the name of the inmate,
  - (c) the name, address and date of birth of each visitor,
  - (d) the form of identification used by each visitor as evidence of his or her name and address,
  - (e) the relationship between each visitor and the inmate,
  - (f) the purpose of (and, if appropriate, the authority for) the visit,
  - (g) the form (contact or non-contact) in which the visit is permitted,
  - (h) the name of the correctional officer who supervised the visit,
  - (i) if the visit was terminated by a correctional officer, the fact that the visit was terminated and the reason for its termination.
- (3) The record must also contain the following particulars of each visit that has been refused—
- (a) the date on which the visit was refused,
  - (b) the name, address and date of birth (if known) of the visitor,
  - (c) the reason for the visit being refused.
- (4) Copies of the record are to be kept in the way and for the period the Commissioner determines.

## **Division 2 Special visits: legal business, foreign nationals, Aboriginal persons**

### **82 Visits to transact legal business**

In addition to any other visit authorised by this Regulation, an inmate is entitled to be visited by the inmate's legal practitioner.

### **83 Visits to foreign nationals**

In addition to any other visit authorised by this Regulation, an inmate who is a national of a foreign country may be visited by—

- (a) a diplomatic or consular representative in Australia or New South Wales of the foreign country, or

- (b) a diplomatic or consular representative in Australia or New South Wales of another foreign country that assumes responsibility for the inmate's interests, or
- (c) if the inmate is a refugee or stateless person, a representative of a national or international organisation (for example, Amnesty International) that is recognised by the Commonwealth Government as having as an object the protection of the interests of that kind of inmate.

#### **84 Visits to Aboriginal persons**

- (1) In addition to any other visit authorised by this Regulation, an inmate who is an Aboriginal person may be visited by—
  - (a) a field officer of the Aboriginal Legal Service (NSW/ACT) Limited, or
  - (b) a field officer of any other organisation that provides legal or other assistance to Aboriginal persons and that is approved by the Commissioner.
- (2) In this clause, **Aboriginal person** has the same meaning as it has in the [Aboriginal Land Rights Act 1983](#).

#### **85 Prior appointment necessary**

A prior appointment for a visit under this Division must be made with the governor.

#### **86 Time, duration and number of visits**

- (1) Visits to an inmate under this Division are not to be restricted in duration or number but must be made during normal visiting hours.
- (2) The governor of a correctional centre may extend normal visiting hours to permit a visit under this Division if, in the governor's opinion—
  - (a) it is convenient and practicable to do so, and
  - (b) the governor can make satisfactory security arrangements.

### **Division 3 Permits to visit correctional centres**

#### **87 Permit for visits**

- (1) A visitor's permit may be issued authorising a person to visit a specified correctional centre for any official, scientific, religious, educational, sociological or other purpose approved by the Commissioner.
- (2) A visitor's permit—
  - (a) may be issued by the Commissioner, and
  - (b) may be issued unconditionally or subject to conditions specified in the permit.

- (3) An application for a visitor's permit is to be made in writing to the Commissioner, and the Commissioner's decision as to whether or not to grant the permit is final.

#### **88 Cancellation of permits**

The Commissioner may cancel a visitor's permit at any time.

#### **89 Return of expired or cancelled permits**

A person to whom a visitor's permit is issued must return it to the Commissioner as soon as the permit expires or is cancelled.

Maximum penalty—5 penalty units.

#### **90 Preliminary requirements for visits**

A person to whom a visitor's permit is issued—

- (a) is not entitled to visit a correctional centre without the prior approval of an authorised officer, and
- (b) must, before the visit takes place, inform an authorised officer of the purpose of the visit.

#### **91 Restrictions on holders of visitors' permits**

(1) A person to whom a visitor's permit is issued—

- (a) must not enter any part of a correctional centre to which entry is forbidden by the correctional officer supervising the visit, and
- (b) must comply with any reasonable direction given by the correctional officer supervising the visit.

(2) While visiting a correctional centre under a visitor's permit, a person must not communicate with an inmate, or come into physical contact with an inmate, unless authorised to do so—

- (a) by the conditions of the permit, or
- (b) by an authorised officer.

Maximum penalty—5 penalty units.

### **Division 4 Control of visits to correctional centres and inmates**

#### **92 Application of Division**

This Division applies to all visits under Division 1, 2 or 3.



### **93 Proof of identity of visitor and purpose of visit may be required**

- (1) An authorised officer may require a visitor—
  - (a) to produce evidence, satisfactory to the authorised officer, of the person's name and address, and
  - (b) to state the purpose of the visit.
- (2) A visitor must not produce evidence, or make a statement, in response to a requirement under subclause (1) knowing the evidence or statement is false or misleading in a material particular.  
Maximum penalty—10 penalty units.
- (3) An authorised officer may require a visitor to remove any face covering worn by the visitor so as to enable the visitor's face to be seen by the officer or another authorised officer or person assisting in following the procedures under subclause (4).
- (4) An authorised officer who requires a visitor to remove a face covering under subclause (3) must, as far as is reasonably practicable, ensure that the following procedures are followed—
  - (a) the authorised officer must ask for the visitor's co-operation,
  - (b) the viewing of the visitor's face must be conducted—
    - (i) in a way that provides reasonable privacy for the visitor if the visitor requests privacy, and
    - (ii) as quickly as is reasonably practicable,
  - (c) the viewing of the face of a child under 12 years of age may only be conducted if a responsible person for the child is present during the viewing,
  - (d) if the visitor is 12 years old or older and requests it—the viewing of the visitor's face is to be conducted by an authorised officer of the same sex as the visitor or, if an authorised officer of that sex is unavailable, by another person of that sex at the direction of an authorised officer,
  - (e) if the visitor is a child under 12 years old and the responsible person for the child requests it—the viewing of the child's face is to be conducted by a female authorised officer or, if a female authorised officer is unavailable, by another female person at the direction of an authorised officer.
- (5) It is sufficient compliance with a requirement made under subclause (3) if only so much of the face covering as prevents the visitor's face from being seen is removed.
- (6) An authorised officer may not require a visitor to remove a face covering under

subclause (3) if the visitor establishes, to the officer's satisfaction, that the visitor has a special justification for not removing the face covering.

**Note—**

A special justification includes having a legitimate medical reason for not removing the face covering.

(7) An authorised officer may refuse to allow a person to visit a correctional centre if the person fails to comply with a requirement under subclause (1) or (3).

(8) In this clause—

**face** and **face covering** have the same meanings as they have in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**responsible person** for a child has the same meaning as it has in section 10 of the [Court Security Act 2005](#).

**special justification** has the same meaning as it has in section 19B of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**94 Approval of visitors to extreme high risk restricted inmates and national security interest inmates**

- (1) A person may visit an extreme high risk restricted inmate or a national security interest 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 or a national security interest inmate.
- (3) The Commissioner may, on the basis of a criminal record check or for any other reason, refuse to approve a person as a visitor to an extreme high risk restricted inmate or a national security interest inmate.
- (4) The Commissioner may revoke an approval of a person as a visitor to an extreme high risk restricted inmate or a national security interest 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 governor to refuse to allow a person to visit an inmate under clause 106.

**95 (Repealed)**

**96 Hindering or obstructing dogs**

A visitor must not hinder or obstruct a dog being used to assist in maintaining the good

order and security of a correctional centre.

Maximum penalty—5 penalty units.

**97 (Repealed)**

**98 Unauthorised use of cameras or recording equipment**

- (1) A visitor must not take photographs of, or operate video or audio recording equipment at, a correctional centre without the prior approval of the governor.

Maximum penalty—20 penalty units.

- (2) The governor may confiscate any photograph, film, tape or other recording, or delete any digital recording, taken or made by a person in contravention of this clause.
- (3) The governor may destroy any part of a confiscated photograph, film, tape or recording that the governor is satisfied is likely to prejudice the security of a correctional centre or place anyone's personal safety at risk.
- (4) Any part of the photograph, film, tape or recording that the governor is satisfied is not likely to prejudice the security of a correctional centre or place anyone's personal safety at risk must be returned to the person from whom it was taken.
- (5) Before returning any photograph, film, tape or recording, the governor may charge the person for payment of any costs incurred in processing or developing it.

**99 Delivery of articles to and from visitors**

- (1) Except as otherwise provided by this Part—

- (a) a visitor must not deliver anything to or receive anything from an inmate at a correctional centre, and
- (b) an inmate at a correctional centre must not deliver anything to or receive anything from a visitor.

Maximum penalty (for an offence committed by a visitor): 1 penalty unit.

**Note—**

Failure by an inmate to comply with subclause (1)(b) is a correctional centre offence.

- (2) With the approval of an authorised officer—

- (a) a visitor may deliver an article to a correctional officer at a correctional centre for delivery to an inmate, and
- (b) an inmate may deliver an article to a correctional officer for delivery to a visitor.

### **100 Prevention of physical contact with inmates**

- (1) Visits to inmates may be either contact visits, in which the inmate and the visitor are permitted physical contact with each other, or non-contact visits, in which the visit takes place in an environment in which physical contact is prevented.
- (2) The governor of a correctional centre may direct that a visit is to be, or is to continue as, a non-contact visit if of the opinion that the visitor is likely—
  - (a) to introduce into the centre prohibited goods or any other property that an inmate is not authorised by this Regulation to possess, or
  - (b) to act in a threatening, offensive, indecent, obscene, abusive or improper way.
- (3) A direction under this clause has effect for the period specified by the direction or, if a period is not specified, from the time it is given until it is revoked by a further direction.
- (4) Despite subclauses (1)–(3), a visit to a Category AA male inmate, Category 5 female inmate or an extreme high risk restricted inmate may not be a contact visit unless the Commissioner so approves.

### **101 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.
- (4) The Commissioner may authorise a departure from the requirements of this clause in respect of a particular visitor or a particular visit.

### **102 Visits to be within sight of correctional officer**

- (1) A visit must take place within sight of a correctional officer unless the governor permits otherwise.
- (2) Subclause (1) does not apply to the holder of a visitor's permit under Division 3 who is authorised by the conditions of the permit to interview or examine an inmate out of sight of a correctional officer.

### **103 Special arrangements for legal documents**

- (1) An authorised officer may inspect or examine, but not read, any document or other

recorded material, including information recorded in electronic form, that is taken into a correctional centre by an inmate's legal practitioner for the purpose of discussing or transacting legal business.

- (2) The governor of a correctional centre must ensure that arrangements are made for an inmate and the inmate's legal practitioner to have joint access to any document or other recorded material that is taken into the centre for the purpose of discussing or transacting legal business.
- (3) Nothing in this clause limits the operation of clause 100.

#### **104 Termination of visits**

- (1) An authorised officer may terminate any visit (whether or not the visitor is entitled to make the visit) if of the opinion—
  - (a) that the visitor has contravened any provision of the Act or this Regulation, or
  - (b) that the visitor, or inmate being visited by the visitor, is or has been acting in a threatening, offensive, indecent, obscene, abusive or improper way, or
  - (c) that the continuation of the visit would prejudice the good order and security of the correctional centre, or
  - (d) that it is in the interests of the visitor, being a visitor who is under the age of 18 years, to terminate the visit.

**Note—**

For example, the Commissioner may terminate a visit by 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.

- (2) If a visit is terminated under this clause, the authorised officer must ensure notice of that fact is given to the governor.
- (3) The governor must ensure a copy of the notice is sent to the Commissioner.
- (4) A person whose visit is terminated under this clause may be removed from the correctional centre if he or she fails to leave when requested.

### **Division 5 General restrictions on persons who may visit**

#### **105 Application of Division**

This Division applies to all visits under Division 1, 2 or 3.

#### **106 General power to prevent visits**

Each of the following persons may refuse to allow another person to visit a correctional centre or an inmate if of the opinion that the visit would prejudice the good order and security of the centre—

- (a) the governor of the correctional centre,
- (b) a correctional officer holding office or acting in a rank that is of or above the rank of Assistant Superintendent,
- (c) a person holding office or acting in a rank that is of or above a rank equivalent to Assistant Superintendent (in the case of a correctional centre managed in accordance with Part 12 of the Act).

**107 Visitors under the influence of alcohol or drugs**

An authorised officer may refuse to allow a person to visit a correctional centre or an inmate if of the opinion that the person is under the influence of alcohol or a drug.

**108 Commissioner may bar persons from visiting correctional centres**

- (1) The Commissioner may direct that a particular person be prevented from entering, or from visiting an inmate at, any correctional centre, if the Commissioner considers that—
  - (a) the visit would prejudice the good order and security of any correctional centre, or
  - (b) the visitor has, during the current visit or during a previous visit, acted in a threatening, offensive, indecent, obscene, abusive or improper way.
- (2) The Commissioner may direct that a person who is under the age of 18 years is to be prevented from visiting an inmate at any correctional centre, if the Commissioner considers that it is in the interest of the person that the direction be given.

**Note—**

For example, the Commissioner may direct that a child be prevented from 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.

- (3) A direction under this clause has effect for the period specified in the direction or, if a period is not specified, from the time it is given until it is revoked by a further direction.
- (4) Despite the direction, the Commissioner may permit the person to whom the direction applies to visit a particular correctional centre or particular inmate.
- (5) Permission given under subclause (4) may be given subject to any condition that the Commissioner considers appropriate.
- (6) Without limiting subclause (5), the Commissioner may impose the following conditions—
  - (a) that the visit be a non-contact visit,
  - (b) that, in the case of a visit by a child, the child be accompanied by an approved adult for the duration of the visit.

**108A Commissioner may bar restricted associates from visiting correctional centre**

The Commissioner may direct that a restricted associate of an inmate be prevented from entering, or from visiting the inmate at, the correctional centre in which the inmate is held.

**109 Unauthorised persons not to be admitted to correctional centres**

A person who is not otherwise authorised by this Regulation to be admitted to a correctional centre must not be admitted to the centre without the prior authority of the Commissioner.

**Division 6 Written communications with inmates**

**110 Correspondence generally**

(1) Subject to this Division—

- (a) an inmate may send letters or parcels to, and receive letters or parcels from, any other person, and
- (b) a letter or parcel sent to or by an inmate is not to be censored.

(2) An inmate must not send or receive any letter or parcel otherwise than through the hands of a nominated officer.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

**111 Certain articles prohibited**

An inmate must not send from a correctional centre—

- (a) any threatening, offensive, indecent, obscene or abusive written or pictorial matter, or
- (b) any offensive, indecent or obscene article.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**112 Opening of letters and parcels generally**

- (1) The governor of a correctional centre or a nominated officer may open, inspect and read a letter or parcel sent to or by an inmate.
- (2) The governor of a correctional centre or a nominated officer may, if a letter or parcel opened, inspected or read under this clause contains prohibited goods, confiscate the letter or parcel and its contents and deal with them in accordance with the directions of the Commissioner.

- (3) The inmate is to be informed of the confiscation of any letter, parcel or prohibited goods under subclause (2).
- (4) The governor of a correctional centre or a nominated officer may—
  - (a) copy any written or pictorial matter contained in a letter or parcel sent to an inmate that has been opened, inspected or read under this clause, and
  - (b) deal with the original written or pictorial matter in accordance with the directions of the Commissioner, and
  - (c) deliver a copy of the written or pictorial matter to the inmate instead of the original matter.
- (4A) Subclause (4B) applies if a nominated officer is of the opinion that the written or pictorial matter contained in a letter or parcel opened, inspected or read under this clause—
  - (a) contains anything likely to prejudice the good order and security of any correctional centre, or
  - (b) is threatening, offensive, indecent, obscene or abusive.
- (4B) The nominated officer may direct that—
  - (a) if the letter or parcel has been sent by an inmate—a copy of the written or pictorial matter be made, and
  - (b) in any case—a copy of the written or pictorial matter be retained.
- (5) This clause does not apply to—
  - (a) any letter or parcel addressed to, or received from, an exempt body or exempt person, or
  - (b) any letter or parcel to which clause 115 applies.

**112A Commissioner may prevent correspondence with restricted associates**

- (1) The Commissioner may direct an inmate not to send or receive a letter or parcel to or from a restricted associate of the inmate.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

- (2) The governor of a correctional centre or a nominated officer may, if a letter or parcel is sent to or by an inmate from or to a restricted associate of the inmate—
  - (a) open, inspect and read the letter or parcel and its contents, and
  - (b) confiscate the letter or parcel and its contents and deal with them in accordance



with the directions of the Commissioner.

### **113 Certain correspondence privileged**

- (1) As soon as practicable after receiving from an inmate any letter or parcel addressed to an exempt body or exempt person, a nominated officer must post the letter or parcel to the addressee, without opening, inspecting or reading it.
- (2) As soon as practicable after receiving from an exempt body or exempt person any letter or parcel addressed to an inmate, a nominated officer must deliver the letter or parcel to the inmate, without opening, inspecting or reading it.
- (3) Subclause (2) applies only to a letter or parcel that is contained in an envelope or package that is addressed to the governor together with a note to the effect that the letter or parcel is to be delivered to the inmate without being opened, inspected or read by any person other than the inmate.
- (4) In the case of a letter or parcel from an exempt person, a nominated officer may require the letter or parcel to be opened by the inmate in his or her presence if of the opinion that it may contain prohibited goods and, if it does so, may confiscate the letter or parcel and its contents and deal with them in accordance with the directions of the Commissioner.
- (5) This clause does not apply to any letter or parcel to which clause 115 applies.

### **114 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) Despite any other provision of this Regulation, a letter or parcel from an inmate the subject of a notice under this clause may be confiscated 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.

### **115 Correspondence with Category AA male inmates, Category 5 female inmates, extreme high risk restricted inmates and national security interest inmates**

- (1) **General rule regarding correspondence** The governor 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 to any person or body by a Category AA male inmate, a Category 5 female inmate, an extreme high risk restricted inmate or a national security interest inmate, or

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

(1A) **Delivery and retention of copies of correspondence** The governor or a nominated officer may, subject to this clause—

(a) direct that a further copy of any written or pictorial matter contained in a letter or parcel opened, inspected, read and copied under subclause (1) be made and retained, and

(b) deal with the original written or pictorial matter in accordance with the directions of the Commissioner, and

(c) deliver a copy of the written or pictorial matter to the inmate instead of the original matter.

(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, an extreme high risk restricted inmate or a national security interest 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, an extreme high risk restricted inmate or a national security interest 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 governor—

(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, an extreme high risk restricted inmate or a national security interest 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 governor—
    - (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
  - (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, an extreme high risk restricted inmate or a national security interest 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 governor or a nominated officer contains prohibited goods or contravenes this Regulation, the governor 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 the 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.

**116 Additional requirements for correspondence from extreme high risk restricted inmates and national security interest inmates**

- (1) All correspondence from an extreme high risk restricted inmate or a national security interest 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 or a national security interest inmate and addressed to any person (other than an exempt body)

contains any correspondence that is written in a language other than English, the governor or nominated officer may arrange for a translation of the correspondence.

**117 Register of correspondence with Category AA male inmates, Category 5 female inmates, extreme high risk restricted inmates and national security interest 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, an extreme high risk restricted inmate or a national security interest inmate.
- (2) A nominated officer must ensure the following is 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 who dealt with it,
    - (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 who dealt with it,
    - (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.

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

### **118 Correspondence with legal practitioners**

Subject to clauses 115 and 116, this Regulation does not limit correspondence between an inmate and the inmate's legal practitioner in respect of any matters affecting the inmate's trial, conviction or imprisonment.

## **Division 7 Use of telephones and fax machines by inmates**

### **119 Permission required to make telephone calls or send faxes**

- (1) An inmate must not make a telephone call or send a fax without the permission of an authorised officer.
- (2) An inmate must not make more telephone calls or send more faxes in any week than the maximum number fixed by the Commissioner for the inmate or the class of inmates to which the inmate belongs.
- (3) An inmate must not have telephone or fax communication with an inmate of another correctional centre without the permission of the governors of both correctional centres.
- (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 the 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.
- (5) As soon as practicable after terminating an inmate's telephone call or fax communication, a correctional officer must ensure details of the reason for the termination are recorded, and report the details to the governor.
- (6) All telephone calls made by an extreme high risk restricted inmate or a national security interest 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.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **119A Commissioner may prevent communication with restricted associates**

The Commissioner may direct an inmate not to make or receive a telephone call or send or receive a fax to or from a restricted associate of the inmate.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **120 Cost of telephone calls and faxes**

- (1) The cost of a telephone call made by an inmate (including the telephone component of the cost of sending a fax) is to be met by the inmate.
- (2) Subclause (1) does not apply to—
  - (a) the first local call made in any week by a convicted inmate, or
  - (b) the first 3 local calls made in any week by an unconvicted inmate or civil inmate, or
  - (c) any call made to the Office of the Ombudsman, the Independent Commission Against Corruption or the Legal Aid Commission, or
  - (d) any call of a kind that the Commissioner directs is to be met by Corrective Services NSW, or
  - (e) any call whose cost is met by the receiver.
- (3) An inmate must pay an amount for each page, to be determined by the Commissioner, for any fax sent to, and accepted by, the inmate.
- (4) In this clause, **local call** means a telephone call that is charged for at local call rates.

### **121 Possession of cameras, video or audio recorders**

An inmate must not have a camera, or video or audio recording equipment, or a charger for a camera or that kind of equipment, in his or her possession.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **122 Use or possession of mobile phones**

An inmate must not use or have in his or her possession a mobile phone or any part of it, a mobile phone SIM card or any part of it, or a mobile phone charger or any part of it.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

## **Division 8 General**

### **123 Supply of information concerning offences to police**

- (1) If a nominated officer finds that a letter, parcel or other article contains information or any other thing that the officer has reasonable grounds to believe—
  - (a) is likely to prejudice the good order and security of a correctional centre, or
  - (b) relates to a criminal offence which has been or may be committed,the nominated officer must as soon as practicable report the circumstances to the governor.
- (2) If the governor is of the opinion that a letter, parcel or other article the subject of a report contains information that may be required for the purpose of the administration of justice, the governor—
  - (a) may give particulars of the information to a police officer, and
  - (b) may deliver the letter, parcel or article to a police officer.

### **124 Property brought to correctional centre by other persons**

- (1) Any property sent to an inmate, or delivered to the governor of a correctional centre to be given to an inmate, is to be dealt with by the governor in accordance with clause 9 as if the property had been surrendered by the inmate on being received into the centre.
- (2) This clause does not apply to any money sent to an extreme high risk restricted inmate or delivered to the governor of a correctional centre for payment into the inmate's account.

### **125 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 governor of a correctional centre may seize any money sent to an extreme high risk restricted inmate or delivered to the governor 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 after being notified of its availability for collection, the Commissioner may confiscate the money.

- (5) Any confiscated money becomes the property of the State, to be disposed of as the Commissioner directs.
- (6) The governor of a correctional centre must ensure a record is kept of all money dealt with under this clause.
- (7) The record must contain the following information—
  - (a) the amount of money,
  - (b) the date on which it was received,
  - (c) whether it was returned to or collected by the sender or giver, or confiscated by the Commissioner,
  - (d) if it was returned to or collected by 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 who collected it,
  - (e) if it was confiscated by the Commissioner, the date on which it was confiscated,
  - (f) any other incidental particulars.
- (7A) This clause does not apply to a payment of money authorised by the Commissioner into an inmate's account.
- (8) This clause does not prevent payments being made into an inmate's account under section 7 of the Act.

#### **126 Property brought into correctional centre illegally**

- (1) Any property brought into a correctional centre in contravention of the Act, this Regulation or any other law may be confiscated by the governor of the correctional centre.
- (2) Property that is confiscated under this clause becomes the property of the State, to be disposed of as the Commissioner may direct.

#### **Note—**

Section 75 of the Act provides that the Commissioner may confiscate any property (including any money) that is unlawfully in the possession of an inmate. Property that is confiscated under the section becomes the property of the State, to be disposed of as the Commissioner may direct.



## **Part 6 Correctional centre discipline**

### **Division 1 Declaration of correctional centre offences**

#### **127 Contraventions of particular provisions, orders or directions**

A contravention by an inmate, whether by act or omission, of any of the following is declared to be a correctional centre offence for the purposes of Division 6 of Part 2 of the Act—

- (a) a provision of the Act,
- (b) an order or direction made under a provision of the Act,
- (c) a provision of this Regulation specified in Schedule 2.

#### **128 Attempts**

An attempt by an inmate to commit a correctional centre offence is to be dealt with in the same way as that offence and, for that purpose, is itself declared to be a correctional centre offence for the purposes of Division 6 of Part 2 of the Act.

### **Division 2 Maintenance of order and discipline**

#### **129 Maintenance of order and discipline generally**

- (1) Order and discipline in a correctional centre are to be maintained with firmness, but with no more restriction or force than is required for safe custody and well-ordered community life within the centre.
- (2) A correctional officer must endeavour to control inmates by showing them example and leadership and by enlisting their willing co-operation.
- (3) At all times, inmates are to be treated in a way that encourages self-respect and a sense of personal responsibility.

#### **130 Directions relating to order or discipline**

- (1) Directions for the purpose of maintaining good order and discipline—
  - (a) may be given to inmates by the Commissioner, by the governor of a correctional centre or by a correctional officer, and
  - (b) may be given orally or in writing.
- (2) An inmate must not refuse or fail to comply with a direction under this clause.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

### **131 Use of force in dealing with inmates**

- (1) In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible.
- (2) The nature and extent of the force that may be used in relation to an inmate are to be dictated by circumstances, but must not exceed the force that is necessary for control and protection, having due regard to the personal safety of correctional officers and others.
- (3) If an inmate is satisfactorily restrained, the only force that may be used against the inmate is the force that is necessary to maintain that restraint.
- (4) Subject to subclauses (1)–(3), a correctional officer may have recourse to force for the following purposes—
  - (a) to search, if necessary, an inmate or to seize a dangerous or harmful article,
  - (b) to prevent the escape of an inmate,
  - (c) to prevent an unlawful attempt to enter a correctional centre by force or to free an inmate,
  - (d) to defend himself or herself if attacked or threatened with attack, but only if the officer cannot otherwise protect himself or herself from harm,
  - (e) to protect other persons (including correctional officers, departmental officers, inmates and members of the public) from attack or harm, but only if there are no other immediate or apparent means available for their protection,
  - (f) to avoid an imminent attack on the correctional officer or some other person, but only if there is a reasonable apprehension of an imminent attack,
  - (g) to prevent an inmate from injuring himself or herself,
  - (h) to ensure compliance with a proper order, or maintenance of discipline, but only if an inmate is failing to co-operate with a lawful correctional centre requirement in a way that cannot otherwise be adequately controlled,
  - (i) to move inmates who decline or refuse to move from one location to another in accordance with a lawful order,
  - (i1) to allow a medical practitioner to carry out medical treatment on an inmate in accordance with section 73 of the Act,
  - (i2) to allow treatment (including any medication) to be given to an inmate in accordance with section 84 of the *Mental Health Act 2007*,

- (j) to achieve the control of inmates acting defiantly,
  - (k) to avoid imminent violent or destructive behaviour by inmates,
  - (l) to restrain violence directed towards the correctional officer or other persons by an uncontrollable or disturbed inmate,
  - (m) to prevent or quell a riot or other disturbance,
  - (n) to deal with any other situation that has a degree of seriousness comparable to that of the situations referred to in paragraphs (a)-(m).
- (5) Subclause (4) does not limit the operation of any law with respect to the force that may be used to effect an arrest.

### **132 Use of equipment for restraining inmates**

- (1) With the concurrence of the governor, a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purpose of restraining inmates.
- (2) With the concurrence of the Commissioner, a correctional officer may also use the following equipment for the purpose of restraining inmates—
  - (a) anklecuffs,
  - (b) other articles, other than chains or irons, approved by the Commissioner for use for that purpose.

### **133 Report on use of force**

- (1) Any correctional officer who uses force on an inmate must immediately give a report about the use of force to the governor.
- (2) The report must—
  - (a) be in writing, and
  - (b) specify the name or names of the inmate or inmates and the name or names of the correctional officer or correctional officers involved in the use of force, and
  - (c) specify the location where the force was used, and
  - (d) describe the nature of the force used and the circumstances requiring its use, and
  - (e) be signed by each correctional officer involved in the use of force.
- (3) This clause does not require a correctional officer to include information in a report if it is impossible or impracticable for the officer to obtain the information.

(4) This clause does not apply in respect of—

(a) a threat of the use of force, or

(b) the use of an instrument of restraint in circumstances where—

(i) the inmate is restrained for the purposes of being moved from one location to another, and

(ii) the move and use of the restraint is required to be noted administratively.

### **Division 3 Particular offences**

#### **134 Contravention of conditions of leave**

An inmate the subject of a local leave order, local leave permit or interstate leave permit must not contravene any condition to which the order or permit is subject.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **135 Concealment for escape**

An inmate must not conceal himself or herself for the purpose of effecting an escape or enabling any other inmate to effect an escape.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **136 Concealment of certain items**

An inmate must not make, conceal or have in his or her possession anything for use for the purpose of effecting an escape or committing an offence, or enabling any other inmate to effect an escape or commit an offence.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

#### **137 Possession of offensive weapon or instrument**

(1) An inmate must not have an offensive weapon or instrument in his or her possession.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

(2) In this clause, **offensive weapon or instrument** has the same meaning as it has in section 4(1) of the *Crimes Act 1900*.

#### **138 Intimidation**

(1) An inmate must not use insulting, abusive or threatening language to or in the presence of another person.

(2) An inmate must not threaten to damage or destroy any property of another person.

(3) An inmate must not otherwise behave in a threatening way towards another person.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**139 Indecency**

(1) An inmate must not act indecently, or behave in an obscene way, in the presence of or towards any other person.

(2) An inmate must not engage in unwelcome conduct of a sexual nature in relation to any other person in circumstances that are likely to cause the other person to feel humiliated, intimidated or offended.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**140 Riots**

An inmate must not participate in a riot or incite any other inmate to participate in a riot.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**141 Physical aggression**

(1) An inmate must not assault any other person or incite any other inmate to assault any other person.

(2) An inmate must not engage in wrestling, sparring, fighting or other physical combat with any other inmate.

(3) An inmate must not throw an article, or operate a device from which an article is projected, so as to cause a risk of injury to any person or of damage to any property.

(4) Subclauses (2) and (3) do not prevent an inmate from engaging in any activity as a necessary incident of taking part in training or a contest or other sporting event organised for inmates by an authorised officer.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**142 General property offences**

(1) An inmate must not steal the property of any other person.

(2) An inmate must not damage or destroy any property, other than property of the

inmate.

- (3) An inmate must not introduce into food or drink intended for human consumption anything liable to render it unpalatable or unwholesome.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**143 Hindering or obstructing dogs**

An inmate must not hinder or obstruct a dog being used to assist in maintaining the good order and security of a correctional centre.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**144 Causing harm to animals**

An inmate must not cause harm to any bird, reptile or other animal.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**145 Correctional centre property offences**

Unless authorised to do so by the Commissioner, the governor of the correctional centre or a correctional officer, an inmate must not alter, remove or otherwise interfere with or be in possession of—

- (a) any lock, key, bolt, bar, ventilator or other correctional centre fixture or fitting, or
- (b) any fire extinguisher, firehose, restraining equipment, electrical installation or any other appliance, equipment or property in or used in the correctional centre or the structure of the correctional centre, or
- (c) any notice exhibited at the correctional centre, or
- (d) any inmate's cell card, or
- (e) any other document or thing used by the governor or a correctional officer for the purpose of administration of the centre,

except in so far as it is reasonably necessary to do so in observing the normal routine of the centre.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**146 Tattooing**

An inmate must not—

- (a) make a tattoo on himself or herself or any other inmate, or
- (b) consent to being tattooed by any other inmate.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**147 Gambling**

An inmate must not organise or participate in any form of gambling.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**148 Alcohol**

- (1) An inmate must not consume, or have in his or her possession, any alcohol or other intoxicating substance or any substance reasonably capable of becoming (by fermentation or distillation) an intoxicating substance.
- (2) An inmate must not prepare or manufacture alcohol or any other intoxicating substance.
- (3) An inmate does not contravene subclause (1)—
  - (a) if the inmate has the alcohol or other substance in his or her possession for consumption or use on the advice of a registered medical practitioner, registered dentist or registered nurse given for medical, dental or nursing reasons, or
  - (b) if the inmate consumes the alcohol or other substance—
    - (i) in accordance with the instructions of the medical practitioner, dentist or nurse, or
    - (ii) as an ordinary incident of participating in a religious service conducted at a correctional centre with the consent of the governor.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**149 Possession of drugs**

- (1) An inmate must not have any drug in his or her possession.
- (2) An inmate does not contravene this clause if the inmate has the drug in his or her possession for use on the advice of a registered medical practitioner, registered dentist or registered nurse given for medical, dental or nursing reasons.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **150 Administration of drugs**

- (1) An inmate must not—
  - (a) administer any drug to himself or herself or any other person, or
  - (b) consent to being administered any drug by any other person.
- (2) An inmate does not contravene this clause if the drug has been administered by or in accordance with the instructions of a registered medical practitioner, registered dentist or registered nurse given for medical, dental or nursing reasons.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **151 Possession of drug implements**

- (1) An inmate must not have in his or her possession any needle, syringe, smoking accessory or other implement intended for use in the administration of a drug.
- (2) An inmate does not contravene this clause if the implement has been in the possession of the inmate for the purposes of—
  - (a) the administration of a drug in accordance with the instructions of a registered medical practitioner or registered dentist given for medical or dental reasons, or
  - (b) taking a drug lawfully supplied by a registered medical practitioner, registered dentist or registered nurse for medical, dental or nursing reasons.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **152 Self-intoxication**

An inmate must not deliberately consume or inhale any intoxicating substance.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

### **153 Failing prescribed drug test**

- (1) An inmate contravenes this clause if the result of a prescribed drug test—
  - (a) shows the presence of a drug in the inmate's body or urine, and
  - (b) indicates that the drug has been administered to the inmate (whether by the inmate or by another person) while the inmate has been an inmate.



- (2) An inmate does not contravene this clause if the drug has been administered by or in accordance with the instructions of a registered medical practitioner, registered dentist or registered nurse given for medical, dental or nursing reasons.
- (3) In this clause, **prescribed drug test** means a drug test carried out in accordance with directions given by the governor of a correctional centre or a correctional officer holding office or acting in a rank that is of or above the rank of Chief Correctional Officer.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**154 (Repealed)**

**155 Bribery**

An inmate must not—

- (a) offer, make or give to a correctional officer or departmental officer any payment, gratuity or present, or
- (b) provide, or offer to provide, a service to a correctional officer or departmental officer, in consideration or for the purpose that the officer will neglect his or her duty, give preferred treatment or act in any other way that is inconsistent with the proper performance of the officer's duties.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**156 Obstruction**

An inmate must not wilfully hinder or obstruct a correctional officer in the performance of the officer's duties.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

**Division 4 Testing for alcohol or drugs**

**157 Breath testing**

- (1) On forming a suspicion that an inmate has recently consumed or is under the influence of alcohol or any other intoxicating substance, a correctional officer or other person having supervision of the inmate may require the inmate to undergo a breath test.
- (2) An inmate must not refuse or fail to comply with a requirement under subclause (1).

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

**158 Evidence as to presence of alcohol or intoxicating substance**

(1) In any proceedings for a correctional centre offence that are being dealt with under the Act by the governor or a Visiting Magistrate, and in which it is alleged that an inmate has consumed alcohol or any other intoxicating substance, a certificate signed by an authorised officer to the effect that—

- (a) an inmate named in the certificate submitted to a breath test, and
- (b) the breath test was given on the day and completed at the time stated in the certificate, and
- (c) there was a measurable quantity of alcohol or any other intoxicating substance present in the inmate's breath or blood, as determined by the breath test, on the date and at the time stated in the certificate,

is admissible in evidence of the facts so certified.

(2) In any proceedings referred to in subclause (1), evidence of—

- (a) the condition of the device used to carry out the breath test, or
- (b) the way in which the breath test was carried out,

is not required unless evidence that the device was not in proper condition or that the test was not properly carried out has been adduced.

**159 Drug test sample if drug use suspected**

(1) On forming a suspicion that an inmate—

- (a) has been administered (whether by himself or herself or otherwise) with a drug, or
- (b) is under the influence of a drug,

a correctional officer holding office or acting in a rank that is of or above the rank of Chief Correctional Officer may require the inmate to supply a drug test sample for testing or analysis and give directions as to how the sample is to be supplied.

(2) The directions may require the inmate to comply with directions given by a correctional officer as to how the sample is to be supplied.

(3) An inmate must not refuse or fail to comply with a direction under this clause.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

(4) An analysis of the sample must be carried out by an analyst.

(5) In any proceedings for a correctional centre offence that are being dealt with under the Act by the governor or a Visiting Magistrate, and in which it is alleged that a requirement was made under subclause (1), a certificate signed by an authorised officer to the effect that the requirement was made—

- (a) for a specified inmate, or
- (b) for all inmates of a specified class,

is admissible in evidence of the facts so certified.

#### **160 Drug test sample whether or not drug use suspected**

- (1) A correctional officer holding office or acting in a rank that is of or above the rank of Chief Correctional Officer may require an inmate to supply a drug test sample for testing or analysis and give directions as to how the sample is to be supplied.
- (2) The directions may require the inmate to comply with directions given by a correctional officer as to how the sample is to be supplied.
- (3) An inmate must not refuse or fail to comply with a direction under this clause.

**Note—**

Failure by an inmate to comply with this subclause is a correctional centre offence.

- (4) An analysis of the sample must be carried out by an analyst.
- (5) A sample may be required under this clause and tested or analysed for the presence of a drug even though the inmate concerned may not be reasonably suspected of having administered a drug to himself or herself or of being under the influence of a drug.

#### **161 Evidence as to use of drugs**

(1) In any proceedings for a correctional centre offence that are being dealt with under the Act by the governor or a Visiting Magistrate, and in which it is alleged that an inmate has been under the influence of a drug or that a drug has been present in the inmate's body or urine, a certificate signed by an authorised officer to the effect that—

- (a) the correctional officer received a drug test sample obtained in a specified way, or
- (b) the correctional officer arranged for the sample to be submitted for analysis by an analyst to determine the presence of any drugs in the inmate's body or urine, or
- (c) the container was sealed, and marked or labelled, in a specified way,

is admissible in evidence of the facts so certified.

(2) In any proceedings referred to in subclause (1), a certificate signed by an analyst to the effect that, on a specified day—

- (a) the analyst received for analysis a container holding a drug test sample, or
  - (b) the container, when received, was sealed with an unbroken seal, and was marked or labelled in a specified way, 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, an analyst,
- is admissible in evidence of the facts so certified.

(3) In any proceedings referred to in subclause (1)—

- (a) evidence that an analyst received a container holding a drug test sample, being a container that was marked or labelled to indicate that it held a drug test sample obtained from a specified inmate on a specified day, is evidence that the sample was a drug test sample obtained from that inmate 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 analyst.

#### **162 Supply of test results to Justice Health and Forensic Mental Health Network**

The Commissioner may provide results of positive tests of drug test samples to—

- (a) the Chief Executive, Justice Health and Forensic Mental Health Network, and
- (b) in the case of tests on serious offenders, the Review Council.

### **Division 5 Punishments**

#### **163 Definition of “withdrawable privilege”**

The following privileges or amenities are declared to be withdrawable privileges for the purposes of Division 6 of Part 2 of the Act—

- (a) attendance at the showing of films or videos or at concerts or other performances,
- (b) participation in or attendance at any other organised leisure time activity,
- (c) use of, or access to, films, video tapes, records, cassettes, CDs or DVDs,
- (d) use of, or access to, television, radio or video, cassette, CD or DVD players, whether for personal use or for use as a member of a group,

- (e) use of, or access to, a musical instrument, whether for personal use or for use as a member of a group,
- (f) use of library facilities, except in so far as the use is necessary to enable study or research to be undertaken by an inmate in the inmate's capacity as a student who is enrolled in a course of study or training,
- (g) ability to purchase goods (including under clause 177),
- (h) keeping of approved personal property (including goods purchased or hired under clause 177),
- (i) pursuit of a hobby,
- (j) use of telephone, except for calls to legal practitioners and exempt bodies,
- (k) participation in contact visits,
- (l) permission to be absent from a correctional centre under a local leave permit or interstate leave permit.

#### **164 Prohibited punishments**

- (1) An inmate must not—
  - (a) be put in a dark cell, or under mechanical restraint, as a punishment, or
  - (b) be subjected to—
    - (i) solitary confinement, or
    - (ii) corporal punishment, or
    - (iii) torture, or
    - (iv) cruel, inhumane or degrading treatment, or
  - (c) be subjected to any other punishment or treatment that may reasonably be expected to adversely affect the inmate's physical or mental health.
- (2) For the purposes of subclause (1)(b)(i), the following are not solitary confinement—
  - (a) segregating an inmate from other inmates under section 10 of the Act,
  - (b) confining an inmate to cell in accordance with an order under section 53 or 56 of the Act,
  - (c) keeping an inmate separate from other inmates under this Regulation,
  - (d) keeping an inmate alone in a cell, if a nursing officer considers that it is desirable in the interest of the inmate's health to do so.

## **Part 7 Inmates' requests and complaints**

### **Division 1 Official Visitors**

#### **165 Notice of availability of Official Visitors**

- (1) The governor of a correctional centre must notify the following of the date and time when an Official Visitor to the centre will be at the centre and available for interviews—
  - (a) all correctional officers and departmental officers at the centre,
  - (b) all inmates at the centre.
- (2) If aware that an inmate considers a complaint or inquiry made by the inmate has not been dealt with satisfactorily by a correctional officer or departmental officer, the governor must advise the inmate that the inmate may request an Official Visitor to deal with it.
- (3) This clause does not apply in relation to any Category AA male inmate, Category 5 female inmate, extreme high risk restricted inmate or national security interest inmate.

#### **166 Complaints and inquiries**

- (1) An Official Visitor who receives a complaint or inquiry—
  - (a) may clarify details of the complaint or inquiry—
    - (i) with a correctional officer, departmental officer, medical officer or nursing officer, or
    - (ii) with the inmate concerned, and
  - (b) must record details of the complaint or inquiry in the Official Visitor's official diary, and
  - (c) must ascertain—
    - (i) from a correctional officer, departmental officer, medical officer or nursing officer, or
    - (ii) from the inmate concerned,what action has been taken or information provided in response to the complaint or inquiry, and
  - (d) must complete and send to the Commissioner an Official Visitor's record form (containing particulars of action taken in relation to the complaint or inquiry) for statistical purposes.

- (2) An Official Visitor must deal with a complaint or inquiry by—
- (a) if of the opinion that the complaint or inquiry can be resolved quickly by bringing it to the attention of the governor—informing the governor of that fact and attempting to have it resolved at that level, or
  - (b) advising—
    - (i) a correctional officer, departmental officer, medical officer or nursing officer, or
    - (ii) the inmate concerned,of any other action that the Official Visitor thinks could be taken in relation to the complaint or inquiry, or
  - (c) with the consent of the officer or inmate concerned—referring the complaint or inquiry on behalf of the officer or inmate to a person the Official Visitor considers appropriate.
- (3) In dealing with a complaint or inquiry at any level, an Official Visitor must not—
- (a) interfere with the management or discipline of a correctional centre, or
  - (b) give any instructions to any correctional officer, departmental officer, medical officer, nursing officer or inmate.
- (4) If more than one Official Visitor is appointed to a correctional centre, each Official Visitor must inform the other Official Visitors of the persons they have interviewed at the centre and of the nature and substance of any complaints or inquiries received.
- (5) Nothing in this clause permits an Official Visitor to deal with a complaint or inquiry received from a Category AA male inmate, a Category 5 female inmate, an extreme high risk restricted inmate or a national security interest inmate.

### **167 Reports by Official Visitors**

- (1) An Official Visitor's periodic report to the Minister under section 228(5)(d) of the Act must be in writing.
- (2) An Official Visitor may report to the Minister at any time if of the opinion that a complaint or inquiry received by the Official Visitor requires the immediate attention of the Minister.

## **Division 2 General**

### **168 Requests to governor**

- (1) A correctional officer to whom an oral or written request by an inmate for permission to speak with the governor is addressed or delivered must, without unreasonable

delay, convey it to the governor.

- (2) The governor of a correctional centre—
  - (a) to whom a request referred to in subclause (1) is conveyed, or
  - (b) to whom an oral or written request by an inmate for permission to speak with the governor is addressed or delivered directly,must give the inmate an opportunity to speak with the governor on the day on which the request is conveyed or made, or as soon as practicable after that day.
- (3) The governor must consider what the inmate has to say and, having done so, must orally inform the inmate of any action that the governor has taken or proposes to take or that the governor does not propose to take any action, as the case may be.

### **169 Requests to Minister, Commissioner or Official Visitors**

- (1) On receiving an oral or written request by an inmate for permission to speak with the Minister, the Commissioner or an Official Visitor about a specific matter, a correctional officer must refer the request to the governor without unnecessary delay.
- (2) On receiving an oral or written request by an inmate for permission to speak with the Minister, the Commissioner or an Official Visitor about a specific matter, whether directly from the inmate or referred by a correctional officer, the governor must make a written record of the fact that the request has been made.
- (3) If the request relates to a matter that the governor can dispose of personally, the governor—
  - (a) must dispose of the matter, as soon as practicable, by taking the action the governor considers appropriate (being action that may consist of or include making a recommendation to the Commissioner), and
  - (b) must make a written record of the action taken (being a record that must include particulars of any recommendation to the Commissioner), and
  - (c) must ensure the record is available for inspection by the person with whom the inmate wished to speak when that person next attends the correctional centre (if that person so requires).
- (4) If the request relates to a matter that the governor cannot dispose of personally, the governor must ensure the person with whom the inmate wished to speak is informed of the request when that person next attends the correctional centre.
- (5) Despite any other provision of this Regulation, a Category AA male inmate, a Category 5 female inmate, an extreme high risk restricted inmate or a national security interest inmate is not entitled, and is not to be permitted, to speak with an Official Visitor.



### **170 Complaints to Minister or Commissioner**

- (1) An inmate at a correctional centre may make a written complaint to the Minister or the Commissioner about—
  - (a) the inmate's treatment in the centre, or
  - (b) the administration or management of the centre.
- (2) An inmate who wishes to complain about a matter that the governor can dispose of personally must first make a request for permission to speak with the governor regarding the matter.
- (3) An inmate may place a complaint in a sealed envelope addressed to the Minister or the Commissioner and deliver it to a correctional officer or the governor.
- (4) The person to whom an inmate delivers the envelope must, without opening it, send it to the addressee.

### **171 Mischievous complaints**

An inmate must not—

- (a) make a complaint knowing that the complaint is baseless, or
- (b) in or in connection with a complaint referred to in paragraph (a), make any statement (whether orally or in writing) knowing that it is false or misleading in a material particular.

#### **Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

## **Part 8 Release procedures for correctional centres**

### **172 Inmates to check personal property and records**

- (1) Before an inmate is released from a correctional centre, the governor must ensure the inmate is given an opportunity to inspect, in the presence of a correctional officer—
  - (a) the inmate's personal property that is in the governor's custody, and
  - (b) any official correctional centre records that relate to money belonging to the inmate.
- (2) The inmate may lodge a written complaint with the correctional officer about—
  - (a) the condition of, or any deficiency in, the property, or
  - (b) any mistake in the records.

- (3) A correctional officer who receives a complaint under subclause (2) must immediately refer it to the governor.
- (4) The governor must ensure the complaint is investigated and the result of the investigation is reported to the inmate at the inmate's pre-release interview.
- (5) If it is brought to the governor's attention that—
  - (a) the result of any investigation is not to the satisfaction of the inmate, or
  - (b) any investigation has not been completed before the release of the inmate,the governor must, without delay, notify the Commissioner of the complaint and the result of the investigation, or the fact that the investigation has not been completed.
- (6) An inmate must sign a receipt for any personal property or money delivered to the inmate immediately before release from a correctional centre.

### **173 Pre-release interviews**

When an inmate is about to be released from a correctional centre, an authorised officer must—

- (a) interview the inmate, and
- (b) report to the inmate on the results of any investigation by the governor of a complaint made by the inmate under clause 172, and
- (c) if the inmate is being released on parole, good behaviour bond or bail undertaking—explain to the inmate the terms on which the inmate is being released, and the result that may follow if any of the terms is breached by the inmate.

#### **Note—**

Clause 217 contains specific provisions with respect to the information to be given to a person who is being released on parole.

## **Part 9 Miscellaneous provisions relating to full-time imprisonment**

### **174 Preservation of scenes of serious indictable offences and serious incidents**

- (1) The governor of a correctional centre must take all reasonable steps to preserve from interference—
  - (a) any place within the centre—
    - (i) where a serious indictable offence has been, or appears to have been, committed, or
    - (ii) where an incident involving serious personal injury or major property damage has, or appears to have, occurred, and

(b) any article found at or in the vicinity of that place, regardless of whether or not it is, or appears to be, connected with the commission of an offence or occurrence of an incident referred to in paragraph (a),

for so long as is necessary to enable any investigation into the circumstances of the offence or incident to be carried out by police officers or other persons authorised to conduct an investigation.

(2) The governor's obligations under this clause are subject to the practical limitations that may from time to time arise in connection with the administration of the correctional centre.

**Note—**

Section 21 of the *Interpretation Act 1987* defines a serious indictable offence to mean an offence that is punishable by imprisonment for life or for a term of 5 years or more.

**175 Payment for work done by inmates**

(1) An inmate who complies with conditions set by the Commissioner may be paid for work done in accordance with scales determined by the Commissioner.

(2) Any payment is to be held to the credit of the inmate.

**176 Prohibited work**

(1) An inmate must not be employed in a disciplinary capacity.

(2) An inmate must not be employed to perform work for the benefit of the Commissioner or any correctional officer or departmental officer.

**177 Purchasing and renting goods**

(1) The governor of a correctional centre may permit an inmate to purchase or rent any goods that Corrective Services NSW, or the Commissioner, is not required to provide to the inmate under the Act or this Regulation if—

(a) the inmate asks the governor to provide the goods, and

(b) the goods are of a type approved by the Commissioner, and

(c) the governor considers that permitting the purchase or rental of the goods would not prejudice the good order and security of the correctional centre.

(2) The inmate must pay an amount that is the cost of purchasing or renting the goods to the Commissioner.

(3) The inmate must return any goods rented in accordance with this clause to the governor of the correctional centre on the inmate's release from custody.

(4) This clause does not limit clause 48, 52 or 120.

(5) In this clause, **goods** does not include prohibited goods.

#### **178 Governor as informant in proceedings before Visiting Magistrates**

In proceedings before a Visiting Magistrate under Division 6 of Part 2 of the Act, the governor of a correctional centre may act as the informant.

#### **179 Monthly returns of punishments imposed by governors or Visiting Magistrates**

The governor of a correctional centre must send to the Commissioner at least once a month a copy of the entries in the record kept under section 61 of the Act in relation to any punishment imposed during the previous month.

#### **180 Lodging of appeals to District Court from decision of Visiting Magistrate**

- (1) An inmate must lodge a notice of appeal, or application for leave to appeal, under section 62 of the Act with the governor.
- (2) On receiving a notice or application from an inmate, the governor must immediately forward a copy of it to the Visiting Magistrate by whom the relevant penalty was imposed on the inmate.
- (3) On receiving the notice or application from the governor, the Visiting Magistrate must send it, together with all other relevant papers held by the Visiting Magistrate, to a registrar of the District Court.
- (4) Section 14 of the *Crimes (Appeal and Review) Act 2001* does not apply to the notice or application.

#### **181 Applications for leave of absence**

- (1) An application under section 26 or 29 of the Act for a local or interstate leave permit is to be made in a form approved by the Commissioner.
- (2) The Commissioner may require that an application be accompanied by a declaration, in a form approved by the Commissioner, by the person in whose company the inmate is to remain while on leave.

#### **182 Establishment of Ethics Committee**

- (1) The Commissioner may establish an Ethics Committee comprising at least 6 members appointed by the Commissioner, of whom—
  - (a) at least 3 are to be departmental officers, and
  - (b) at least one is to be a member of the public appointed to represent the community, and

- (c) at least one is to be an accredited chaplain, and
  - (d) at least one is to be a person with experience in post-graduate medical research.
- (2) One of the departmental officers referred to in subclause (1)(a) is to be appointed as chairperson of the Ethics Committee.
  - (3) Three members of the Ethics Committee, of whom one is the chairperson, constitute a quorum of the committee.
  - (4) A decision supported by a majority of the votes at a meeting of the Ethics Committee at which a quorum is present is the decision of the committee.
  - (5) Subject to subclauses (3) and (4), the procedure of the Ethics Committee is to be determined by the chairperson.

### **183 Functions of Ethics Committee**

- (1) The functions of the Ethics Committee are as follows—
  - (a) to consider applications for approval to undertake research and make recommendations to the Commissioner as to whether or not the applications should be approved and, if so, on what conditions,
  - (b) to advise the Commissioner on the records and information that may be provided to persons undertaking research, and the conditions on which the records and information are to be provided,
  - (c) to advise the Commissioner on the conditions on which a person undertaking research may be issued with a visitor's permit under Division 3 of Part 5,
  - (d) to advise the Commissioner on ethical issues,
  - (e) to advise the Commissioner on other matters the Commissioner may refer to the Committee for advice.
- (2) In this clause, **research** has the same meaning as it has in section 267(1) of the Act.

### **184 False or misleading information**

An inmate must not, in or in connection with a notice or application under Parts 2–9 of this Regulation or under Part 2 of the Act, make any statement (whether orally or in writing) knowing that it is false or misleading in a material particular.

**Note—**

Failure by an inmate to comply with this clause is a correctional centre offence.

## **Part 10 Conditions of community-based orders**

## **Division 1 Preliminary**

### **185 Interpretation**

In this Part—

**offender** means a person in respect of whom an intensive correction order, community correction order or conditional release order is in force.

**supervisor** means a person who is responsible for supervising offenders performing community service work, whether that person is employed or is a volunteer.

## **Division 2 Obligations of offenders under conditions of community-based orders**

### **186 Obligations under condition not to commit offence (ICO, CCO or CRO)**

For the purposes of sections 82, 107B and 108B of the Act, an offender who is subject to a condition that the offender must not commit any offence has the following obligation—  
not to commit any offence.

### **187 Obligations under supervision condition (ICO)**

- (1) For the purposes of section 82 of the Act, an offender who is subject to a supervision condition of an intensive correction order has the following obligations—
  - (a) to report to a community corrections officer—
    - (i) on the day the order is made, if the order has a home detention condition or electronic monitoring condition, or
    - (ii) as soon as practicable after (but not later than 7 days after) the order is made, if the order does not have a home detention condition or electronic monitoring condition,
  - (b) to report to a community corrections officer at the times and places directed by the officer,
  - (c) to comply with all reasonable directions of a community corrections officer relating to any of the following—
    - (i) the place in which the offender is to reside,
    - (ii) participating in programs, treatment, interventions or other related activities,
    - (iii) without limiting subparagraph (ii), participating in employment, education, training or other related activities,
    - (iv) not undertaking specified employment, education, training, volunteer, leisure

- or other activities,
  - (v) not associating with a specified person,
  - (vi) not frequenting or visiting a specified place or area,
  - (vii) ceasing drug use,
  - (viii) ceasing or reducing alcohol use,
  - (ix) drug and alcohol testing,
  - (x) requirements for the purposes of monitoring compliance with the order,
  - (xi) giving consent to third parties providing information to a community corrections officer about the offender's compliance with the order,
  - (d) to comply with any other reasonable directions of a community corrections officer,
  - (e) to permit a community corrections officer to visit the offender at the offender's place of residence at any time and, for that purpose, to enter the premises,
  - (f) to notify a community corrections officer of any change to the offender's place of residence, contact details or employment—
    - (i) if practicable, before the change occurs, or
    - (ii) if that is not practicable, within 7 days of the change occurring,
  - (g) not to leave New South Wales without the permission of a community corrections manager,
  - (h) not to leave Australia without the permission of the Parole Authority.
- (2) A community corrections officer may vary or waive the obligation to report to a community corrections officer under subclause (1)(a).
- (3) Supervision of an offender who is subject to a supervision condition is to be carried out by a community corrections officer.

**188 Obligations under supervision condition (CCO or CRO)**

- (1) For the purposes of sections 107B and 108B of the Act, an offender who is subject to a supervision condition of a community correction order or conditional release order has the following obligations—
- (a) to report to a community corrections officer as soon as practicable after (but not later than 7 days after) the supervision condition is imposed,

**Note—**

A supervision condition may be imposed at the time the order is made or at a later time.

- (b) to report to a community corrections officer at the times and places directed by the officer,
  - (c) to comply with all reasonable directions of a community corrections officer relating to any of the following—
    - (i) the place in which the offender is to reside,
    - (ii) participating in programs, treatment, interventions or other related activities,
    - (iii) without limiting subparagraph (ii), participating in employment, education, training or other related activities,
    - (iv) not undertaking specified employment, education, training, volunteer, leisure or other activities,
    - (v) not associating with a specified person,
    - (vi) not frequenting or visiting a specified place or area,
    - (vii) ceasing drug use,
    - (viii) ceasing or reducing alcohol use,
    - (ix) drug and alcohol testing,
    - (x) requirements for the purposes of monitoring compliance with the order,
    - (xi) giving consent to third parties providing information to a community corrections officer about the offender's compliance with the order,
  - (d) to comply with any other reasonable directions of a community corrections officer,
  - (e) to permit a community corrections officer to visit the offender at the offender's place of residence at any time and, for that purpose, to enter the premises,
  - (f) to notify a community corrections officer of any change to the offender's place of residence, contact details or employment—
    - (i) if practicable, before the change occurs, or
    - (ii) if that is not practicable, within 7 days of the change occurring.
- (2) A community corrections officer may vary or waive the obligation to report to a community corrections officer under subclause (1)(a).
- (3) Supervision of an offender who is subject to a supervision condition is to be carried out by a community corrections officer.



### **189 Obligations under home detention condition (ICO)**

- (1) For the purposes of section 82 of the Act, an offender who is subject to a home detention condition of an intensive correction order has the following obligations—
- (a) to remain at the offender's address at all times otherwise than—
    - (i) when engaged in activities approved by a community corrections officer, or
    - (ii) when faced with immediate danger (for example, in a fire or medical emergency),
  - (b) to submit a schedule of proposed activities for approval by a community corrections officer,
  - (c) to comply with all reasonable directions of a community corrections officer about giving consent to third parties providing information to that or another community corrections officer for the purpose of checking compliance with the approved activities,
  - (d) to submit to electronic monitoring,
  - (e) to comply with all reasonable directions of a community corrections officer or electronic monitoring officer in relation to the electronic monitoring of the offender,
  - (f) not to remove or tamper with, damage or disable electronic monitoring equipment,
  - (g) not to possess or have in the offender's control any firearm or any prohibited weapon (within the meaning of the *Weapons Prohibition Act 1998*), unless approval is granted by a community corrections manager.

**Note—**

Under the *Firearms Act 1996* it is an offence to possess or use a firearm unless authorised to do so by licence or permit in force under that Act. Under the *Weapons Prohibition Act 1998* it is an offence to possess or use a prohibited weapon unless authorised to do so by permit in force under that Act.

- (2) The provisions of subclause (1) apply to an offender who is subject to a condition of home detention (for a period of up to 30 days) imposed by the Parole Authority under section 164 of the Act in the same way as they apply to an intensive correction order that is subject to a home detention condition.

**Note—**

The purpose of subclause (2) is to provide that the obligations under subclause (1) in relation to a home detention condition apply also in relation to a condition of home detention imposed by the Parole Authority under section 164 of the Act. See section 164(5) of the Act.

### **189A Obligations under electronic monitoring condition (ICO)**

For the purposes of section 82 of the Act, an offender who is subject to an electronic

monitoring condition of an intensive correction order has the following obligations—

- (a) to submit to electronic monitoring,
- (b) to comply with all reasonable directions of a community corrections officer or an electronic monitoring officer in relation to the electronic monitoring of the offender,
- (c) not to remove or tamper with, damage or disable the electronic monitoring equipment.

**189B Obligations under curfew condition (ICO or CCO)**

For the purposes of sections 82 and 107B of the Act, an offender who is subject to a curfew condition of an intensive correction order or community correction order has the following obligation—

to remain at the address specified in the condition or by a community corrections officer within the hours specified in the condition, otherwise than when faced with immediate danger (for example, in a fire or medical emergency) or as specified in the condition.

**189C Obligations under community service work condition (ICO or CCO)**

(1) For the purposes of sections 82 and 107B of the Act, an offender who is subject to a community service work condition of an intensive correction order or community correction order has the following obligations—

- (a) to report to a community corrections officer as soon as practicable after (but not later than 7 days after) the community service work condition is imposed or as directed by the court,

**Note—**

A community service work condition may be imposed at the time the order is made or at a later time.

- (b) to participate in any activities connected with the administration of the community service work condition as directed by a community corrections officer (including reporting to that or another community corrections officer),
- (c) to permit a community corrections officer to visit the offender at the offender's address at any time and for that purpose enter the premises at that address,
- (d) to give consent to third parties providing information to a community corrections officer about the offender's compliance with the condition,
- (e) to perform the number of hours of community service work specified in the community service work condition,
- (f) to sign an attendance register on arrival at and on departure from any work site,

- (g) to perform community service work in accordance with the reasonable directions of a community corrections officer or supervisor,
  - (h) to keep in good condition any clothing and equipment issued to the offender for the purpose of performing community service work,
  - (i) not to damage or deface property that is on or forms part of a work site, unless directed to do so by a supervisor,
  - (j) to observe the standards of safety with respect to the offender's performance of community service work as directed by a community corrections officer or supervisor,
  - (k) not to report for, or perform, community service work while under the influence of alcohol or drugs,
  - (l) to submit to testing for alcohol or drugs (as directed under clause 205),
  - (m) to give a community corrections officer notice of the reasons for any failure to report to a work site or perform work within 7 days after the failure to report or perform the work,
  - (n) if illness or injury is the reason for an offender's failure to report for or to perform work, to provide to a community corrections officer (within 7 days after the failure to report or perform the work) a medical certificate issued by a medical practitioner—
    - (i) stating the nature of the illness or injury, and
    - (ii) indicating that its nature or extent justifies the offender's failure to report or perform the work,
  - (o) to provide (if so directed to by a community corrections officer) a medical certificate issued by a medical practitioner, about—
    - (i) the offender's inability to perform community service work, or
    - (ii) the offender's inability to do something the offender has been directed to do while performing community service work,
  - (p) to submit to a medical examination by a medical practitioner nominated by a community corrections officer.
- (2) A community corrections officer may vary or waive the following obligations—
- (a) to report to a community corrections officer under subclause (1)(a),
  - (b) to give a community corrections officer notice of the reasons for any failure to report to a work site or perform work within 7 days of the failure under subclause

(1)(m),

(c) to give a community corrections officer a medical certificate under subclause (1)(n).

**189D Obligations under rehabilitation or treatment condition (ICO, CCO or CRO)**

For the purposes of sections 82, 107B and 108B of the Act, an offender who is subject to a rehabilitation or treatment condition of an intensive correction order, community correction order or conditional release order has the following obligation—

to participate in any program, treatment, intervention or related activity specified in the condition or by a community corrections officer.

**189E Obligations under abstention condition (ICO, CCO or CRO)**

For the purposes of sections 82, 107B and 108B of the Act, an offender who is subject to an abstention condition of an intensive correction order, community correction order or conditional release order has the following obligation—

to abstain from alcohol or drugs or both, except in the case of drugs prescribed for the offender by a medical practitioner.

**189F Obligations under non-association condition (ICO, CCO or CRO)**

For the purposes of sections 82, 107B and 108B of the Act, an offender who is subject to a non-association condition of an intensive correction order, community correction order or conditional release order has the following obligation—

not to be in the company of any person specified in the non-association condition or communicate with that person by any means, except as specified in the condition.

**189G Obligations under place restriction condition (ICO, CCO or CRO)**

For the purposes of sections 82, 107B and 108B of the Act, an offender who is subject to a place restriction condition of an intensive correction order, community correction order or conditional release order has the following obligation—

not to frequent or visit a specified place or area specified in the place restriction condition, except as specified in the condition.

**189H Obligations under condition to appear before court (CCO or CRO)**

For the purposes of sections 107B and 108B of the Act, an offender who is subject to a condition of a community correction order or conditional release order has the following obligation to appear before a court—

to appear before the relevant court if called on to do so during the term of the order.

**Division 3 Suspension of certain conditions**

### **189I Suspension of supervision conditions**

- (1) A community corrections officer must take the following matters into account before deciding under section 82A, 107E or 108E of the Act to make an order (a **suspension order**) suspending the application of a supervision condition to an offender—
  - (a) the risk of the offender re-offending,
  - (b) the seriousness of the offender's criminal history,
  - (c) the likely benefits of the supervision condition continuing to apply and the effect of any other measures that are being, or may be, taken to address the risk of the offender re-offending,
  - (d) the resources available to supervise the offender and other offenders who may be at a higher risk of re-offending.
- (2) A community corrections officer must not make a suspension order unless the suspension is approved by an officer more senior than the community corrections officer.
- (3) A community corrections officer is required to give notice to an offender of the making or revocation of a suspension order.
- (4) An offender who is subject to a suspension order must notify an office of Community Corrections of any change to the offender's place of residence or contact details.
- (5) The suspension of a supervision condition takes effect when notice of the suspension order is given to the offender.
- (6) The revocation of a suspension order takes effect when notice of the revocation is given to the offender.

## **Part 11 Reinstatement reports for Parole Authority**

### **190 Requirement for reinstatement report**

- (1) If the Parole Authority refers an offender to the Commissioner under section 165(3) of the Act for assessment as to the suitability of the offender for intensive correction in the community, the Commissioner is required to arrange for a report (a **reinstatement report**) to be made.
- (2) A reinstatement report under this clause is to be prepared by a community corrections officer and furnished to the Parole Authority for its consideration.
- (3) The Parole Authority must not reinstate an intensive correction order with a community service work condition or home detention condition unless a reinstatement report prepared for the Parole Authority states that the offender is suitable to be the

subject of that kind of condition.

**191-193 (Repealed)**

**Part 12 Compulsory drug treatment detention**

**194 Regulations relating to parole of offenders serving sentences by way of compulsory drug treatment detention**

Part 14 applies 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.

**195 Application of Part 2 of the Act to Stages 1 and 2 compulsory drug treatment detention**

- (1) For the purposes of section 106V(1) of the Act, the modifications set out in Schedule 3 are prescribed.
- (2) To avoid 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).

**196 Provision of information relating to offenders**

- (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 local health district 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 after the person becomes 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 fax 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.

### **197 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.

(2) A person authorised by the Commissioner may, in accordance with the Commissioner's instructions, 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) An analysis of the sample must be carried out by an analyst.
- (5) A sample may be required under this clause and tested or analysed 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.

### **198 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 the times the Commissioner considers appropriate.
- (2) A person authorised by the Commissioner may, in accordance with the Commissioner's instructions, 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) An analysis of the sample must be carried out by an analyst.
- (5) A sample may be required under this clause and tested or analysed 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.

### **199 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 way, or
  - (b) the person arranged for the sample to be submitted for analysis by an 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 way,is admissible in evidence of the facts so certified.



- (2) In any proceedings before the Drug Court, a certificate signed by an 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 way, 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, an analyst,
- is admissible in evidence of the facts so certified.
- (3) In any proceedings before the Drug Court—
- (a) evidence that an 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 analyst.

**200 Conditions that may be imposed as part of community supervision orders for Stage 2 and Stage 3 offenders**

- (1) 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 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 maintaining or obtaining 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 (for example, in a fire or medical emergency),
- (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) In this clause, **Director** means the governor of the Compulsory Drug Treatment Correctional Centre within the meaning of section 106A of the Act.

## Part 13 Community service work

### Note—

The obligations of an offender under a community service work condition are set out in clause 189C.

### 201 Definitions

In this Part—

**community corrections field officer** means a person who is appointed under clause 328 and employed for the purpose of supervising offenders while the offenders are

performing community service work.

**community service administrative assistant** means a person who is employed for the purpose of undertaking administrative tasks associated with managing offenders subject to a community service work condition.

**offender** means a person in respect of whom an intensive correction order or community correction order, respectively with a community service work condition, is in force.

**supervisor** means a person who is responsible for supervising offenders performing community service work, whether that person is employed or is a volunteer.

## 202 Hours of work

An offender must not be directed to perform more than 8 hours of community service work in any one day, except by agreement between the offender and a community corrections officer or supervisor.

## 203 Tea breaks and meal breaks

An offender is entitled to—

- (a) a 10-minute tea break during each 3-hour period of community service work, and
- (b) a 45-minute meal break at the end of each 4-hour period of community service work (inclusive of any tea break).

## 204 Computation of hours

- (1) The following periods are to be taken to form part of the time spent by an offender in performing community service work—
  - (a) the time spent by the offender at a work site in actually carrying out community service work,
  - (b) the time spent by the offender at a work site in having any tea break or meal break to which an offender is entitled,
  - (c) the time spent by the offender at a work site (otherwise than as referred to in paragraph (a) or (b)) in accordance with directions of a community corrections officer or supervisor,
  - (d) the time spent by the offender in travelling to and from the work site that a community corrections officer considers appropriate and has approved in advance of that travel,
  - (e) the part of the period between—
    - (i) the offender's early release from community service work on any day, and

(ii) the time when the offender would, but for the early release, have been released,

that a community corrections officer considers appropriate.

(2) If, while at the work site, an offender—

(a) is suspected on reasonable grounds to be under the influence of alcohol or drugs, or

(b) conducts himself or herself in an offensive way,

a community corrections officer may deduct the whole or any part of the time spent by the offender at the work site from any calculation of time spent that day by the offender in performing community service work.

### **205 Alcohol and drugs—directions for testing and leaving work site**

(1) On forming a suspicion on reasonable grounds that an offender who is in attendance at a work site has recently consumed or is under the influence of alcohol or drugs—

(a) an authorised testing officer may direct the offender to submit to testing for alcohol or drugs by that or another authorised testing officer, or

(b) a supervisor may direct the offender to leave the work site,

or both.

(2) In this clause, **authorised testing officer** means—

(a) a community corrections field officer, community service administrative assistant or community corrections officer, or

(b) any other person who is authorised by the Commissioner to exercise the functions of an authorised testing officer for the purposes of this clause.

### **206 Exemption of offenders from certain directions on grounds of incapacity**

(1) If satisfied that an offender is incapable of doing something that he or she has been reasonably directed to do, a community corrections officer may exempt the offender from the direction, even if the direction was given by some other community corrections officer or a supervisor.

(2) Before exempting an offender from a direction, or as a condition of giving an exemption, a community corrections officer may require the offender to provide a certificate issued by a medical practitioner to the effect that the offender is incapable of doing the thing concerned.

## 207 Transport arrangements

The Commissioner may make arrangements for transporting offenders to and from any work site.

## 208 Community corrections field officer to report to community corrections officer

A community corrections field officer must, when required by a community corrections officer, report to the community corrections officer on any matter relating to an offender under the community corrections field officer's supervision.

## 209-213 (Repealed)

## Part 14 Parole

### 214 Standard conditions applying to parole

- (1) For the purposes of section 128(1)(a) of the Act, the following are standard conditions of parole—
  - (a) the offender must, while on release on parole, be of good behaviour,
  - (b) the offender must not, while on release on parole, commit any offence,
  - (c) the offender must, while on release on parole, adapt to normal lawful community life.

#### Note—

Contravention of these conditions may result in parole being revoked under section 170A of the Act.

- (2) If the Act applies to the offender because of section 40(4) of the *Children (Detention Centres) Act 1987*, the conditions set out in subclause (1) replace the standard conditions of parole for an offender that applied before the offender became subject to the Act.

### 214A Supervision conditions

- (1) For the purposes of sections 128B(2)(a) and 128C(1) of the Act, an offender who is subject to supervision under a condition of parole imposed by those sections (a **supervision condition**) has the following obligations—
  - (a) after release under the parole order, to report—
    - (i) to a community corrections officer at a time and place directed before release, or
    - (ii) if no direction is given, at an office of Community Corrections within 7 days of release,
  - (b) to report to a community corrections officer at the times and places directed by

the officer,

- (c) to comply with all reasonable directions of a community corrections officer relating to any of the following—
  - (i) the place in which the offender is to reside,
  - (ii) participating in programs, treatment, interventions or other related activities,
  - (iii) without limiting subparagraph (ii), participating in employment, education, training or other related activities,
  - (iv) not undertaking specified employment, education, training, volunteer, leisure or other activities,
  - (v) not associating with a specified person,
  - (vi) not frequenting or visiting a specified place or area,
  - (vii) ceasing drug use,
  - (viii) ceasing or reducing alcohol use,
  - (ix) drug and alcohol testing,
  - (x) requirements for the purposes of monitoring compliance with the parole order,
  - (xi) to give consent to third parties providing information to a community corrections officer about the offender's compliance with the parole order,
- (d) to comply with any other reasonable directions of a community corrections officer,
- (e) to permit a community corrections officer to visit the offender at the offender's place of residence at any time and, for that purpose, to enter the premises,
- (f) to notify a community corrections officer of any change to his or her place of residence, contact details or employment—
  - (i) if practicable, before the change occurs, or
  - (ii) if that is not practicable, within 7 days of the change occurring,
- (g) not to leave New South Wales without the permission of a community corrections manager,
- (h) not to leave Australia without the permission of the Parole Authority.

(1A) For the purposes of sections 128B(2)(a) and 128C(1) of the Act, an offender who is subject to a supervision condition and serving a sentence for a serious sex offence (within the meaning of the *Crimes (High Risk Offenders) Act 2006*) has the following

additional obligations—

- (a) to submit a schedule of proposed activities for approval by a community corrections officer if directed to do so by a community corrections officer,
  - (b) to submit to electronic monitoring,
  - (c) to comply with all reasonable directions of a community corrections officer or an electronic monitoring officer in relation to the electronic monitoring of the offender,
  - (d) not to remove or tamper with, damage or disable the electronic monitoring equipment.
- (2) For the purposes of section 128C(2) of the Act, the period of supervision under a supervision condition imposed on a parole order is—
- (a) the lesser of 3 years or the period that the parole order is in force, or
  - (b) if the Act applies to the offender because of section 40(4) of the *Children (Detention Centres) Act 1987*, the period of supervision applicable to the offender immediately before the offender became subject to the Act.
- (3) In the case of a serious offender, the Parole Authority may while the parole order is in force extend the period of supervision by, or impose a further period of supervision of, up to 3 years at a time.
- (4) Supervision of an offender who is subject to a supervision condition is to be carried out by a community corrections officer.

**215 Consultation required before conditions as to residence or treatment imposed on parole**

- (1) Before the Parole Authority makes a parole order containing terms or conditions relating to residence or treatment—
  - (a) it must consider a report from a community corrections officer as to the offender's circumstances, and
  - (b) it must satisfy itself, having regard to the officer's report, that it is feasible to secure compliance with the terms or conditions.
- (2) Before the Parole Authority makes a parole order containing terms or conditions requiring the co-operation of a person other than the offender or a community corrections officer, it must obtain the consent of the person to the specification of those terms and conditions in so far as they require the person's co-operation.

## **216 Parole orders**

A copy of a parole order made by the Parole Authority must be given to the offender, and further copies are to be sent to—

- (a) the governor of the correctional centre in which the offender is kept, and
- (b) the Commissioner.

## **217 Parole orders to be explained to offenders**

- (1) On the offender's day of release from a correctional centre under a parole order, the governor must ensure that—
  - (a) the order is read to the offender, and
  - (b) the effect of the order is explained to the offender in language that is capable of being readily understood by the offender, and
  - (c) the offender indicates that the offender understands the terms and conditions on which the offender is to be released by signing a statement to that effect on a copy of the order, and
  - (d) all copies of the order are endorsed with the offender's date of release, and
  - (e) a copy of the order is given to the offender, and
  - (f) the copy of the order containing the signed statement referred to in paragraph (c) is retained at the centre.
- (2) If an offender is subject to more than one parole order, this clause does not require common provisions in the orders to be read to the offender more than once.
- (3) The requirements of this clause do not apply in circumstances (for example, when the offender is seriously ill) in which compliance with them would be obviously ineffectual.

## **218 Suspension of supervision conditions**

- (1) A community corrections officer must take the following matters into account before deciding under section 128E of the Act to make an order (a **suspension order**) suspending the application of a supervision condition to an offender—
  - (a) the risk of the offender re-offending,
  - (b) the seriousness of the offender's criminal history,
  - (c) the likely benefits of the supervision condition continuing to apply and the effect of any other measures that are being, or may be, taken to address the risk of the offender re-offending,



- (d) the resources available to supervise the offender and other offenders who may be at a higher risk of re-offending.
- (2) A community corrections officer must not make a suspension order unless the suspension is approved by an officer more senior than the community corrections officer.
- (3) Community Corrections is required to give notice to an offender of the making or revocation of a suspension order.
- (4) An offender who is subject to a suspension order must give notice at an office of Community Corrections of any change to the offender's place of residence or contact details.
- (5) The suspension of a supervision condition takes effect when notice of the order has been given to the offender.
- (6) The revocation of a suspension order takes effect when notice of the revocation is given to the offender under this clause.

**219, 220 (Repealed)**

**221 Commissioner to review supervision obligations for offenders serving existing life sentences**

- (1) This clause applies to an offender to whom section 128B of the Act applies.
- (2) An offender's section 128B obligations must be reviewed by the Commissioner at intervals of not more than 12 months.
- (3) As soon as practicable after imposing a section 128B obligation on an offender, the Commissioner must notify the Parole Authority of that fact.
- (4) In this clause, **section 128B obligation** means an obligation to which an offender is subject under section 128B(2)(b) of the Act.

**222 Revocation of parole orders before release**

- (1) (Repealed)
- (2) The Parole Authority must send copies of an order under section 130 of the Act to the governor of the correctional centre in which the offender is kept.
- (3) As soon as practicable after receiving the order, the governor must ensure that—
  - (a) the order is read to the offender, and
  - (b) the effect of the order is explained to the offender in language that is capable of being readily understood by the offender, and

(c) the offender's rights to a review of the revocation are explained to the offender in language that is capable of being readily understood by the offender, and

(d) a copy of the order is handed to the offender.

(4) The Parole Authority must send notice of the revocation of a parole order under section 130 of the Act to the Commissioner.

#### **222A Preparation of reports by community corrections officer**

(1) A report prepared by a community corrections officer for the purposes of section 135 of the Act (a **parole report**) must address the following matters—

(a) whether or not the officer recommends that a parole order be made for the offender,

(b) the risk of the offender re-offending while on release on parole, and the measures to be taken to address that risk,

(c) how the offender would be managed in the community while on release on parole, as set out in a post-release plan prepared by a community corrections officer in relation to the offender,

(d) the offender's attitude to the offence to which his or her sentence relates, including, where relevant, the offender's attitude to any victim of the offence to which his or her sentence relates, or to the family of any such victim,

(e) the offender's willingness to participate, and participation, in rehabilitation, work, education or other programs in custody and the availability of those programs,

(f) the offender's behaviour in custody, including any correctional centre offences or other offences committed by the offender while in custody,

(g) the offender's response to any previous period of supervision in the community (if applicable) and the willingness of the offender to comply with any conditions to which his or her parole may be made subject.

(2) A parole report for an offender is not required to include a matter under subclause (1)(b)-(g) if a previous parole report has been prepared for the offender and the community corrections officer is of the opinion that the particulars of that matter have not changed since the previous report was prepared.

(3) Despite subclause (2), the Parole Authority may require a parole report for an offender to include any or all of the matters referred to in subclause (1)(b)-(g).

#### **223 Circumstances constituting manifest injustice**

(1) For the purposes of section 137B of the Act, the following circumstances are prescribed as circumstances of manifest injustice where parole has been refused or

revoked (whether before or after release)—

- (a) if it becomes apparent that the decision to refuse or revoke parole was made on the basis of false, misleading or irrelevant information,
  - (b) if it becomes apparent that a matter that was relevant to the decision to refuse or revoke parole is no longer relevant,
  - (c) if it becomes apparent that a matter that was relevant to the decision to refuse or revoke parole has been addressed in a way that warrants reconsideration of the decision or can be so addressed by imposing additional conditions on parole,
  - (d) if a Community Corrections officer requests that the Parole Authority reconsider the decision to refuse or revoke parole (other than where parole has been revoked because the offender, while on parole, committed an offence),
  - (e) if a Community Corrections officer requests that the Parole Authority reconsider the decision to revoke parole and parole has been revoked because the offender, while on release on parole, committed an offence for which any of the following sentences was imposed—
    - (i) a non-custodial sentence,
    - (ii) a custodial sentence with a non-parole period of a term of less than 12 months,
    - (iii) a sentence with a fixed term of less than 12 months,
  - (f) if the decision to revoke parole was made while the offender was subject to a re-integration home detention order.
- (2) For the purpose of section 143B of the Act, the circumstances specified in subclause (1) are prescribed as circumstances constituting 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.
- (3) For the purposes of section 175(1A) of the Act, circumstances in which it becomes apparent that the relevant intensive correction order has been revoked on the basis of false, misleading or irrelevant information are prescribed as circumstances constituting manifest injustice.

#### **224 Notice of initial intention to refuse release on parole**

- (1) A notice under section 139(1)(a) of the Act must be sent to the governor of the correctional centre in which the offender is kept.
- (2) As soon as practicable after receiving the notice, the governor must ensure that—
  - (a) the notice is read to the offender, and

- (b) the effect of the notice is explained to the offender in language that is capable of being readily understood by the offender, and
- (c) the notice is handed to the offender.

### **225 Decision on review of parole refusal**

- (1) A notice under section 141(4)(b) of the Act must be sent to the governor of the correctional centre in which the offender is kept.
- (2) As soon as practicable after receiving the notice, the governor must ensure that—
  - (a) the notice is read to the offender, and
  - (b) the effect of the notice is explained to the offender in language that is capable of being readily understood by the offender, and
  - (c) the offender's rights concerning the Parole Authority's decision are explained to the offender in language that is capable of being readily understood by the offender, and
  - (d) the notice is handed to the offender.
- (3) The governor must keep a copy of the notice.
- (4) The Parole Authority must send a copy of the notice to the Commissioner.

### **226 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 any matters, and address the Parole Authority on any matters, that are relevant to the

proceedings before the Parole Authority.

### **227 Notices to victims**

- (1) The notice to a victim of a serious offender to be given under section 145(1) of the Act or any other notice given under the Act to a victim whose name is recorded in the Victims Register—
  - (a) is to be in writing and sent by post to the last postal address that has been recorded in the Victims Register for the victim, or
  - (b) is to be given by telephone if only a telephone number has been recorded in the Victims Register, or if there is reason to believe that any telephone number that has been recorded is more up to date than the last postal address recorded.
- (2) Notice under section 146(5)(b) of the Act is to be given to each victim of the serious offender, and subclause (1) applies to the notice in the same way as it applies to a notice under section 145(1) of the Act.
- (3) The Parole Authority is to keep a record of the giving of any notice under this clause.

### **228 Submissions by the State**

- (1) If the State notifies the Parole Authority that it may wish to make a submission under section 153 of the Act concerning the release on parole of a serious offender, the Parole Authority must give the State 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 153 of the Act, the State—
  - (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 any matters, and address the Parole Authority on any matters, that are relevant to the proceedings before the Parole Authority.
- (3) A reference in this clause to the State includes a reference to any agent of the State.

### **229 Instrument requiring attendance**

For the purposes of section 186(1) of the Act, an instrument in writing referred to in that subsection must be in the approved form.

### **230 Records of proceedings**

The Parole Authority must keep a record (in writing or otherwise) of the proceedings of the Parole Authority, including a record of—

- (a) whether the State has appeared or been represented before the Parole Authority, and
- (b) the persons appearing or represented before the Parole Authority, and
- (c) the submissions, if any, made by the State or a person referred to in paragraph (b), and
- (d) the reasons, if any, stated in support of the submissions.

### **231 Preparation and adoption of case plans**

- (1) The Commissioner may require a case plan to be prepared in relation to any offender or class of offenders, and may adopt any case plan so prepared.
- (2) A case plan is to be prepared in accordance with any guidelines established from time to time by the Commissioner.
- (3) Subject to subclause (4), any decision under this Part that is made in relation to an offender for whom a case plan has been adopted under this clause is to be made in accordance with that plan.
- (4) Nothing in this clause authorises a decision to limit any conditions that apply to an offender's parole.

### **232 Norfolk Island parole orders**

- (1) The following provisions of the Act apply to and in respect of the parole of an offender and a Norfolk Island parole order in the same way as they apply to and in respect of the parole of any other offender or parole order to which Part 6 of the Act applies—
  - (a) sections 139-141A,
  - (b) sections 145-154,
  - (c) sections 169, 179, 180 and 182.
- (2) The following provisions of the Act do not apply to or in respect of the parole of an offender or a Norfolk Island parole order—
  - (a) sections 128-128B, 130 and 132,

(b) Division 3 of Part 6 of the Act,

(c) sections 160, 160A, 170–172A and 181.

(3) In this clause—

**Norfolk Island parole order** means a parole order issued by the Parole Authority in respect of an offender under the functions conferred by section 160AC(1) of the Act.

**offender** has the same meaning as it has in Division 4A of Part 6 of the Act.

## **Part 14A Re-integration home detention orders**

### **232A Assessment of suitability for re-integration home detention**

(1) A report prepared for the purposes of section 124C of the Act (a **re-integration home detention report**) must address the following matters—

- (a) whether or not the person who prepared the report recommends that a re-integration home detention order be made for the offender,
- (b) the offender's suitability for home detention,
- (c) any risks associated with imposing home detention, including any risks to the offender or any other persons, including children, and any strategies that could manage the risks,
- (d) any other matters relevant to administering a re-integration home detention order.

(2) A re-integration home detention report on an offender who is serving a sentence of 3 years or less must also address the following matters—

- (a) the risk of the offender re-offending while on release under a re-integration home detention order,
- (b) how the offender would be managed in the community while on release under the order, as set out in a post-release plan prepared by a community corrections officer in relation to the offender.

(3) In considering whether to make a re-integration home detention order for an offender who is serving a sentence of more than 3 years, the Parole Authority is to consider the report prepared in relation to the granting of parole for the offender under section 135 of the Act.

(4) A re-integration home detention report for an offender is not required to include a matter under subclause (1)(b)–(d) or (2) if a previous re-integration home detention report has been prepared for the offender and the person preparing the report is of the opinion that the particulars of that matter have not changed since the previous

report was prepared.

- (5) Despite subclause (4), the Parole Authority may require a re-integration home detention report for an offender to include any or all of the matters referred to in subclause (1)(b)–(d) or (2).
- (6) If it appears that the offender does not have accommodation suitable for the purposes of home detention, the re-integration home detention report is not to be finalised until reasonable efforts have been made by a community corrections officer, in consultation with the offender, to find suitable accommodation.

### **232B Standard conditions applying to re-integration home detention orders**

For the purposes of section 124H(1) of the Act, the following are standard conditions of a re-integration home detention order—

- (a) to be of good behaviour,
- (b) not to commit any offence,
- (c) to remain at the offender’s address at all times otherwise than—
  - (i) when engaged in activities approved by a community corrections officer, or
  - (ii) when faced with immediate danger (for example, in a fire or medical emergency),
- (d) to submit a schedule of proposed activities for approval by a community corrections officer,
- (e) to comply with all reasonable directions of a community corrections officer about giving consent to third parties providing information to that or another community corrections officer for the purpose of checking compliance with the approved activities,
- (f) to submit to electronic monitoring,
- (g) to comply with all reasonable directions of a community corrections officer or electronic monitoring officer in relation to the electronic monitoring of the offender,
- (h) not to remove or tamper with, damage or disable electronic monitoring equipment,
- (i) not to possess or have in the offender’s control any firearm or any prohibited weapon (within the meaning of the [Weapons Prohibition Act 1998](#)), unless an approval is granted by a community corrections manager.

**Note—**

Under the [Firearms Act 1996](#), it is an offence to possess or use a firearm unless authorised to do so by licence or permit in force under that Act. Under the [Weapons Prohibition Act 1998](#), it is an offence to possess or use a prohibited weapon unless authorised to do so by permit in force under that Act.



**232C Standard supervision condition**

- (1) For the purposes of section 124H(1) of the Act, it is a standard condition of a re-integration home detention order that the offender is to be subject to supervision for the period of the order.
- (2) An offender who is subject to supervision has the following obligations—
  - (a) to report to a community corrections officer at the times and places directed by the officer,
  - (b) to comply with all reasonable directions of a community corrections officer relating to any of the following—
    - (i) the place in which the offender is to reside,
    - (ii) participating in programs, treatment, interventions or other related activities,
    - (iii) without limiting subparagraph (ii), participating in employment, education, training or other related activities,
    - (iv) not undertaking specified employment, education, training, volunteer, leisure or other activities,
    - (v) not associating with a specified person,
    - (vi) not frequenting or visiting a specified place or area,
    - (vii) ceasing drug use,
    - (viii) ceasing or reducing alcohol use,
    - (ix) drug and alcohol testing,
    - (x) requirements for the purposes of monitoring compliance with the re-integration home detention order,
    - (xi) giving consent to third parties providing information to a community corrections officer about the offender's compliance with the re-integration home detention order,
  - (c) to comply with any other reasonable directions of a community corrections officer,
  - (d) to permit a community corrections officer to visit the offender at the offender's place of residence at any time and, for that purpose, to enter the premises,
  - (e) to notify a community corrections officer of any change to his or her place of residence, contact details or employment—
    - (i) if practicable, before the change occurs, or

- (ii) if that is not practicable, within 7 days of the change occurring,
  - (f) not to leave New South Wales without the permission of a community corrections manager,
  - (g) not to leave Australia without the permission of the Parole Authority.
- (3) Supervision of the offender is to be carried out by a community corrections officer.

#### **232D Review of suitability for parole**

A report prepared for the purposes of section 124I of the Act as to the suitability of an offender for release on parole must address the following matters—

- (a) whether or not the person who prepared the report recommends that the offender be released on parole,
- (b) the offender's response to the re-integration home detention order and the compliance of the offender with the conditions of the order,
- (c) whether there has been any significant change in any of the matters addressed in relation to the offender in the re-integration home detention report prepared under clause 232A.

### **Part 15 Revocation by Parole Authority of certain orders**

#### **233, 234 (Repealed)**

#### **235 Revocation of order and review of revocation**

- (1) For the purposes of section 173(2)(a) of the Act, the prescribed form for a notice of revocation of an intensive correction order or parole order is Form 2 in Schedule 4.
- (2) The notice must be sent to the governor of the correctional centre in which the offender is, or is to be, held in custody.
- (3) As soon as practicable after receiving the notice, the governor must ensure that—
  - (a) the notice is read to the offender, and
  - (b) the effect of the notice is explained to the offender in language that is capable of being readily understood by the offender, and
  - (c) the notice is handed to the offender.
- (4) Notice of an offender's intention to make representations to the Parole Authority concerning the revocation of a parole order—
  - (a) must be given by the offender to the governor of the correctional centre in which the offender is kept, and

(b) must be sent by the governor to the Secretary of the Parole Authority.

### **236 Decision on review of revocation**

- (1) The Parole Authority must send written notice of its decision following a review under section 175 of the Act to—
  - (a) the governor of the correctional centre in which the offender is, or is to be, held in custody, and
  - (b) the Commissioner.
- (2) As soon as practicable after receiving the notice, the governor must ensure that—
  - (a) the notice is read to the offender, and
  - (b) the effect of the notice is explained to the offender in language that is capable of being readily understood by the offender, and
  - (c) the offender's rights concerning the decision are explained to the offender in language that is capable of being readily understood by the offender.

### **237 Notice of revocation of order**

- (1) If the Parole Authority revokes an intensive correction order, re-integration home detention order or parole order under section 179(1) of the Act, the Secretary of the Parole Authority must send written notice of that fact to the Commissioner.
- (2) The notice must be in the approved form and must specify any direction of the Parole Authority as to the day on which the order is to be treated as having been revoked.

### **238 Inquiry into suspected breach of order**

- (1) A notice under section 180(1)(a) of the Act by which an offender is called on to appear before the Parole Authority must be served on the offender at least 7 days before the date set for the inquiry referred to in the notice.
- (2) The Parole Authority must send a copy of each notice to the Commissioner.

### **239 Arrest warrants**

A warrant for the arrest of a person under section 180 of the Act must be in the approved form.

### **240 Warrants of commitment**

A warrant for the commitment of an offender to a correctional centre under section 181 of the Act must be in the approved form.

## Part 16 Correctional officers and departmental officers

### 241 Oath or affirmation of office

- (1) For the purposes of section 236 of the Act, the form for the oath of office as a correctional officer is as follows—

*“I, (name of person making oath), do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second as a correctional officer without fear or favour, malice or ill-will until I am legally discharged, and that while I continue to be a correctional officer I will to the best of my skill and knowledge discharge all my duties faithfully according to law. So help me God.”*

- (2) For the purposes of section 236 of the Act, the form for the affirmation of office as a correctional officer is as follows—

*“I, (name of person making affirmation), do solemnly, sincerely and truly declare and affirm that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second as a correctional officer without fear or favour, malice or ill-will until I am legally discharged, and that while I continue to be a correctional officer I will to the best of my skill and knowledge discharge all my duties faithfully according to law.”*

### 242 Compliance with Commissioner’s instructions and governor’s directions

- (1) The governor of a correctional centre may give directions (not inconsistent with the Commissioner’s instructions) with respect to the administration of the Act in relation to the centre, and must ensure that a record is kept of each direction.
- (2) A correctional officer or departmental officer must comply with the Commissioner’s instructions.
- (3) While employed within a correctional centre, a correctional officer must obey all lawful directions given by the governor of the centre, whether given under this clause or otherwise.
- (4) While on the premises of a correctional centre, a departmental officer must obey all lawful directions given by the governor of the centre, whether given under this clause or otherwise.
- (5) For the purposes of taking any action under section 68 or 69 of the [Government Sector Employment Act 2013](#), a correctional officer or departmental officer is to be presumed to be aware of the officer’s obligations under the Act and this Regulation.

#### Note—

Correctional officers and departmental officers are employed under, and so subject to, the [Government Sector Employment Act 2013](#).

### **243 Declaration about associations with inmates**

- (1) A correctional officer or departmental officer must give written notice to the Commissioner as to any offender—
  - (a) to whom the officer is related, whether by blood or by marriage, or
  - (b) of whom the officer is an associate, whether as a neighbour, friend or acquaintance or through business, sporting or social contact.
- (2) The notice must show the nature and duration of the officer's relationship or association with the offender.
- (3) The notice must be given before the officer first starts duty as a correctional officer or departmental officer, and subsequently as circumstances require.
- (4) A correctional officer or departmental officer must not make a declaration under this clause that the officer knows, or ought reasonably to know, is false or misleading in a material particular.
- (5) This clause does not apply if the association between an officer and offender is through unintentional business, sporting or social contact in a public place.
- (6) In this clause, **offender** means any inmate, intensive correction offender or any person in respect of whom a community correction order, conditional release order or parole order is in force.

### **244 Suspected offences by inmates**

- (1) A correctional officer or departmental officer who suspects that an inmate has committed, or is about to commit, an offence must report that fact to the governor immediately.
- (2) A correctional officer may confine an inmate referred to in subclause (1) to his or her cell, or in some other appropriate place of confinement, pending instructions as to how the inmate should be dealt with.
- (3) An inmate in respect of whom one or more offences have been reported may be confined under this clause, whether for one or more periods of confinement, for no more than 48 hours in total in respect of those offences.

### **245 Uniforms**

- (1) Unless exempted by the Commissioner, a correctional officer must wear the uniform appropriate to the officer's rank at all times while on duty.
- (2) On ceasing to be a correctional officer, a person must return his or her uniform to Corrective Services NSW or must satisfactorily account for it to the Commissioner.

#### **246 Keys and access cards**

- (1) The governor of a correctional centre is to ensure that the keys and access cards of the centre are duly issued and accounted for.
- (2) A correctional officer, departmental officer, medical officer or nursing officer to whom a key or access card is issued must keep it on his or her person at all times until it is returned.
- (3) The officer must not leave a correctional centre while a key of the centre is in his or her possession.

#### **247 (Repealed)**

#### **248 Visitors**

A correctional officer is not to receive visitors at any time while on duty at a correctional centre except with the permission of the governor of the centre.

#### **249 Insulting or abusive language**

- (1) A correctional officer, departmental officer, medical officer or nursing officer must not use insulting or abusive language to any other officer, to any inmate or to any person visiting a correctional centre.
- (2) A correctional officer, departmental officer, medical officer or nursing officer must not say or do anything that is calculated to undermine discipline at a correctional centre or to prejudice the efficiency of, or to bring discredit on, Corrective Services NSW.
- (3) A correctional officer, departmental officer, medical officer or nursing officer must not act deliberately in a way calculated to provoke an inmate.

#### **250 (Repealed)**

#### **251 Honesty**

- (1) A correctional officer, departmental officer, medical officer or nursing officer must at all times be honest and truthful.
- (2) A correctional officer, departmental officer, medical officer or nursing officer—
  - (a) must not make any statement that the officer knows, or ought reasonably to know, is false or misleading in a material particular, and
  - (b) must not destroy or mutilate, or alter or erase any entry in, an official document.

#### **252 Vigilance**

- (1) A correctional officer on duty must at all times devote the whole of his or her attention to the performance of his or her duties.

- (2) A correctional officer must not do anything that is calculated to distract another correctional officer from the performance of the officer's duties.
- (3) A correctional officer must not cease duty until permitted to do so by the governor.

### **253 Reporting of misconduct by correctional officers**

- (1) If—
  - (a) an allegation is made to a correctional officer that another correctional officer has, while carrying out his or her duties as a correctional officer, engaged in conduct that, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct, or
  - (b) a correctional officer sincerely believes that another correctional officer has engaged in conduct of that kind,the correctional officer must report the conduct, or alleged conduct, to a correctional officer who is more senior in rank than the officer making the report.
- (2) The senior correctional officer must report the conduct, or alleged conduct, promptly to the Commissioner if the senior correctional officer believes that it—
  - (a) constitutes, or would constitute, a criminal offence by the correctional officer, or
  - (b) would provide sufficient grounds for taking proceedings or action under section 69 of the *Government Sector Employment Act 2013* against the correctional officer.
- (3) Subclause (1) does not apply to conduct or alleged conduct that—
  - (a) has been made the subject of any proceedings or action under section 69 of the *Government Sector Employment Act 2013*, or
  - (b) has been the subject of evidence or other material given, or submissions made, in the course of criminal proceedings, or
  - (c) has already been reported under this clause to a more senior correctional officer.
- (4) A correctional officer must not, in relation to any other correctional officer—
  - (a) fail to approve or recommend the promotion of the other officer, or
  - (b) take, approve or recommend disciplinary action against the other officer, or
  - (c) direct, approve or recommend the transfer of the other officer to another position in Corrective Services NSW, or
  - (d) make, approve or recommend a decision which detrimentally affects the benefits or awards of the other officer, or

- (e) fail to approve or recommend that the other officer receive education or training which could reasonably be expected to improve the officer's opportunities for promotion or to confer some other advantage on the officer, or
- (f) change, or approve or recommend a change to, the duties of the other officer so that they are not appropriate to the officer's salary or position, or
- (g) otherwise act to the detriment of the other officer,

in retaliation against the other officer because he or she has acted in accordance with this clause or has disclosed information relating to conduct contrary to law to any other correctional officer.

#### **254 Certain contraventions to be dealt with as misconduct**

A correctional officer, departmental officer or casual employee who contravenes a provision of this Regulation is not guilty of an offence but the contravention may be dealt with under section 69 of the [Government Sector Employment Act 2013](#), or any other applicable provision of that Act.

**Note—**

The services of a temporary employee or a casual employee may be terminated at any time under section 47(2) of the [Government Sector Employment Act 2013](#).

#### **255 Confidentiality of records**

- (1) A person involved in the administration of the Act is not authorised to provide to any other person—
  - (a) a photograph, film or video or audio recording of an inmate, or
  - (b) an impression of an inmate's handprints, fingerprints, footprints or toeprints, or
  - (c) any other forensic material (within the meaning of the [Crimes \(Forensic Procedures\) Act 2000](#)) relating to an inmate.
- (2) This clause does not apply in the circumstances referred to in section 257(1)(a)-(e) of the Act.

**Note—**

The circumstances referred to in subclause (2) are the circumstances in which a person is authorised to divulge information obtained in connection with the administration of the Act.

### **Part 17 Conduct of members of correctional staff regarding alcohol**



## and drugs

### Division 1 Preliminary

#### 256 Interpretation

(1) In this Part—

**approved counsellor** means a counsellor approved for the purposes of this Part by the Commissioner.

**AS/NZS 4308** means Australian/New Zealand Standard AS/NZS 4308:2008, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine* as in force on 1 September 2014.

**disciplinary procedure** means any procedure of a disciplinary nature or other related proceedings relating to a contravention of a provision of this Part and includes, but is not limited to, proceedings or action under section 68 or 69 of the [Government Sector Employment Act 2013](#).

**member of correctional staff** has the same meaning as it has in Division 5 of Part 11 of the Act.

**misbehaviour with alcohol** means misbehaviour with a contravention of clause 259.

**misbehaviour with drugs** means misbehaviour with a contravention of clause 260.

**prescribed concentration of alcohol** means a concentration of 0.02 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.

**sample**, in relation to a non-invasive sample, includes, if the sample is divided into portions, a portion of the sample.

(2) In this Part, a member of correctional staff **presents for duty** when the member of staff is present at the staff member's place of work and about to go on duty.

(3) In this Part, a member of correctional staff **tests positive for alcohol** if a test conducted under Division 5 of Part 11 of the Act indicates that the prescribed concentration of alcohol was present in his or her breath or blood—

(a) when the staff member presented for duty, or

(b) while the staff member was on duty.

(4) In this Part, a member of correctional staff **tests positive for prohibited drugs** if a test conducted under Division 5 of Part 11 of the Act indicates that the staff member had a prohibited drug present in any of his or her biological material—

(a) when the staff member presented for duty, or

(b) while the staff member was on duty.

(5) In this Part, a reference to a non-invasive sample does not include a reference to a sample of breath taken by breath test or breath analysis.

### **257 Appointment of authorised persons**

(1) The Commissioner may, by instrument in writing, appoint any person to be an authorised person for the purposes of Division 5 of Part 11 of the Act.

(2) The Commissioner may appoint as an authorised person—

(a) a person by name, or

(b) a person holding office or acting in a particular rank or office, from time to time, by reference to the title of the rank or office concerned.

(3) The Commissioner must give a certificate of appointment as an authorised person to each person appointed under subclause (2)(a).

(4) An authorised person appointed under subclause (2)(a) must, if requested to do so, produce the certificate of appointment to any member of correctional staff required by the authorised person to do any thing under Division 5 of Part 11 of the Act.

(5) The Commissioner must maintain a list of the titles of the ranks or offices referred to in subclause (2)(b).

(6) An authorised person appointed under subclause (2)(b) must, if requested to do so, provide proof that the person holds, or is acting in, the relevant rank or office to any member of correctional staff required by the authorised person to do any thing under Division 5 of Part 11 of the Act.

(7) The proof referred to in subclause (6) may include, but is not limited to, a departmental identification card.

### **258 Hospitals**

For the purposes of Division 5 of Part 11 of the Act, the following premises, institutions or establishments are prescribed as a hospital—

(a) any clinic or other premises operated by Justice Health and Forensic Mental Health Network,

(b) any premises, institution or establishment that is a hospital for the purposes of Division 4 of Part 2 of Schedule 3 to the [Road Transport Act 2013](#).

## **Division 2 Obligations of members of correctional staff**

### **259 Correctional staff's breath or blood must not have prescribed concentration of alcohol**

A member of correctional staff must not have the prescribed concentration of alcohol in his or her breath or blood—

- (a) when the staff member presents for duty, or
- (b) while the staff member is on duty.

### **260 Correctional staff must not have prohibited drug present in biological material**

A member of correctional staff must not have a prohibited drug present in any of his or her biological material—

- (a) when the staff member presents for duty, or
- (b) while the staff member is on duty.

## **Division 3 Testing of members of correctional staff**

### **261 Testing correctional staff**

- (1) A member of correctional staff may be tested under Division 5 of Part 11 of the Act whether or not there is any suspicion that the staff member has recently consumed alcohol or used a prohibited drug.
- (2) The result of the test may be used for the purposes of any disciplinary procedure.

### **262 General rules for the provision or taking of certain samples**

- (1) In this clause, a reference to a non-invasive sample includes a reference to a sample of breath taken by breath test or breath analysis.
- (2) An authorised person who requires a member of correctional staff to provide, or enable to be taken, a non-invasive sample from the staff member under Division 5 of Part 11 of the Act must specify the type of non-invasive sample to be provided or taken.
- (3) The non-invasive sample so provided or taken must be of the type of non-invasive sample required by the authorised person.
- (4) The staff member may not elect which type of non-invasive sample is provided, or enabled to be taken.
- (5) A non-invasive sample provided by or taken from a member of correctional staff under Division 5 of Part 11 of the Act—
  - (a) must be provided or taken in circumstances affording reasonable privacy to the

staff member, except as permitted (expressly or impliedly) by any other provision of the Act or this Regulation, and

- (b) must not be provided or taken in the presence or view of a person whose presence is not necessary for the purposes of the provision or taking of the non-invasive sample or required or permitted by another provision of the Act or this Regulation, and
  - (c) must not involve the removal of more clothing than is necessary for providing or taking the non-invasive sample, and
  - (d) must not involve more visual inspection than is necessary for providing or taking the non-invasive sample.
- (6) All non-invasive samples provided by or taken from a member of correctional staff under Division 5 of Part 11 of the Act are to be provided or taken in a way consistent with appropriate medical or other relevant professional standards, with due regard to the dignity and self-respect of the staff member and in as seemly a way as is consistent with the effective provision or taking of the non-invasive sample.
- (7) An authorised person is authorised to take a sample of hair of a member of correctional staff by removing the root of the hair only if—
- (a) the authorised person takes only so much hair as the person believes is necessary for analysis of the sample to be carried out for the purposes of Division 5 of Part 11 of the Act, and
  - (b) strands of hair are taken using the least painful technique known and available to the authorised person.

### **263 Breath testing and breath analysis of members of correctional staff**

- (1) As soon as practicable after a member of correctional staff has undergone a breath test under Division 5 of Part 11 of the Act, the authorised person who conducted the breath test must deliver to the staff member a statement in writing signed by the authorised person specifying—
- (a) the concentration of alcohol determined by the breath test to be present in the staff member's breath and expressed in grams of alcohol per 210 litres of breath (or its equivalent in grams of alcohol per 100 millilitres of blood), and
  - (b) the day on which and time of the day at which the breath test was completed.
- (2) An authorised person may require a member of correctional staff to submit to a breath analysis in accordance with the directions of the authorised person, if—
- (a) it appears to the authorised person as a result of a breath test under Division 5 of Part 11 of the Act that the prescribed concentration of alcohol may be present in

the staff member's breath, or

- (b) the staff member refuses or fails to undergo a breath test under Division 5 of Part 11 of the Act in accordance with the directions of the authorised person when requested to do so by the authorised person.
- (3) As soon as practicable after a member of correctional staff has submitted to a breath analysis the authorised person operating the breath analysing instrument must deliver to the staff member a statement in writing signed by the authorised person specifying—
- (a) the concentration of alcohol determined by the analysis to be present in the staff member's breath and expressed in grams of alcohol per 210 litres of breath (or its equivalent in grams of alcohol per 100 millilitres of blood), and
  - (b) the day on which and time of the day at which the breath analysis was completed.
- (4) A member of correctional staff who is required to undergo a breath test or submit to a breath analysis may request the authorised person making the requisition to arrange for the taking (in the presence of an authorised person) of a sample of the staff member's blood for analysis, at the staff member's own expense, by—
- (a) a medical practitioner nominated by the staff member, or
  - (b) a medical practitioner nominated by the authorised person at the staff member's request, or
  - (c) a pathology specimen collector at a collection centre nominated by the staff member, or
  - (d) a pathology specimen collector at a collection centre nominated by the authorised person at the staff member's request.
- (5) The making of a request under subclause (4) or the taking of a sample of a member of correctional staff's blood does not absolve the staff member from the obligation imposed on the staff member to undergo a breath test or submit to a breath analysis in accordance with this clause.
- (6) In this clause, **collection centre** means a pathology collection centre that is operated by, or in connection with, a pathology laboratory that is accredited by the National Association of Testing Authorities.

#### **264 Restrictions on requiring breath test, breath analysis or non-invasive sample**

An authorised person must not require a member of correctional staff to undergo a test under Division 5 of Part 11 of the Act—

- (a) if the staff member has been admitted to a hospital for medical treatment, unless the

medical practitioner who attends the staff member at the hospital (or, if no medical practitioner is present to attend the staff member, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures) has been notified of the intention to make the requisition and the medical practitioner or registered nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the staff member, or

- (b) if it appears to the authorised person that it would (because of injuries sustained by the staff member) be dangerous to the staff member's medical condition if the staff member complied with the requisition, or
- (c) in the case of a requirement for a test for the purpose of testing for the presence or concentration of alcohol, at any time after the expiration of 3 hours from the latest of the time the staff member last presented for duty, the staff member was last involved in an incident referred to in section 236F(3) of the Act (if any such incident occurred) or the staff member last ceased to be on duty, or
- (d) in the case of a requirement for a test for the purpose of testing for the presence of a prohibited drug, at any time after the expiration of 24 hours from the latest of the time the staff member last presented for duty, the staff member was last involved in an incident referred to in section 236F(3) of the Act (if any such incident occurred) or the staff member last ceased to be on duty, or
- (e) at the staff member's home.

#### **265 Action to be taken with respect to blood samples**

- (1) A medical practitioner or registered nurse who takes a sample of a member of correctional staff's blood under Division 5 of Part 11 of the Act must—
  - (a) if the staff member requests a part of the sample or if the staff member is not capable of requesting a part of the sample, divide the sample into 2 approximately equal portions, and
  - (b) place the sample or each portion of the sample into a separate container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (2) Of the sealed containers—
  - (a) one container must, as soon as reasonably practicable after subclause (1) is complied with, be transported to an accredited analytical laboratory for analysis by an analyst in accordance with subclause (4), and must be stored at that laboratory on behalf of the Commissioner, and
  - (b) the other container must—

- (i) if the staff member has requested a part of the sample, be given to the staff member, or
  - (ii) if the staff member is not capable of requesting a part of the sample as referred to in subclause (1), as soon as reasonably practicable after that subclause is complied with, be transported to the accredited analytical laboratory to which the container referred to in paragraph (a) was sent and must be stored at that laboratory on behalf of the Commissioner.
- (3) If a staff member was not capable of requesting a part of the sample as referred to in subclause (1), the staff member may, within 12 months after the taking of the sample, apply to the laboratory referred to in subclause (2) for the container referred to in subclause (2)(b)(ii) to be sent, for analysis (at the staff member's own expense) of the portion of the sample in that container, to a medical practitioner or laboratory nominated by the staff member.
- (4) The authorised person may arrange for the analyst to—
- (a) determine whether the sample contains alcohol, and if so, the concentration of alcohol, or
  - (b) determine whether the sample contains a prohibited drug, or
  - (c) determine whether the sample contains alcohol, and if so, the concentration of alcohol and determine whether the sample also contains a prohibited drug.

#### **266 Action to be taken with respect to non-invasive samples**

- (1) A person who is provided with a non-invasive sample under Division 5 of Part 11 of the Act from a member of correctional staff or who takes a non-invasive sample from a member of correctional staff must—
- (a) if the staff member requests a part of the sample or if the staff member is not capable of requesting a part of the sample, divide the sample into 2 approximately equal portions or, if the sample cannot be so divided, immediately require and immediately be provided with or take a further sample of the same type of biological material, and
  - (b) place each portion (or if 2 samples of the same type of biological material were provided or taken, each sample) into a container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (2) Of the sealed containers—
- (a) one container must, as soon as reasonably practicable after subclause (1) is

complied with, be transported to an accredited analytical laboratory for analysis by an analyst in accordance with subclause (4), and must be stored at that laboratory on behalf of the Commissioner, and

(b) the other container must—

(i) if the staff member has requested a part of the sample, be given to the staff member, or

(ii) if the staff member is not capable of requesting a part of the sample, as soon as reasonably practicable after subclause (1) is complied with, be transported to the accredited analytical laboratory to which the container referred to in paragraph (a) was sent and must be stored at that laboratory on behalf of the Commissioner.

(3) If a staff member was not capable of requesting a part of the sample as referred to in subclause (1), the staff member may, within 12 months after the taking of the sample, apply to the laboratory referred to in subclause (2) for the container referred to in subclause (2)(b)(ii) to be sent, for analysis (at the staff member's own expense) of the sample, or the portion of the sample, in that container, to a medical practitioner or laboratory nominated by the staff member.

(4) The authorised person may arrange for the analyst—

(a) if the non-invasive sample was provided or taken under section 236G of the Act, to determine whether the sample indicates that the blood of the staff member, by whom the sample was provided or from whom the sample was taken, contained alcohol, and if so, the concentration of alcohol in the staff member's blood or determine whether the sample contains a prohibited drug, or

(b) if the non-invasive sample was provided or taken under section 236F of the Act, to determine whether the sample contains a prohibited drug.

(5) In the case of samples of urine, any sealed containers referred to in subclause (2) must be handled in accordance with the procedure set out in AS/NZS 4308 or any other procedure approved by the Commissioner in that regard.

## **267 Analysis of samples**

(1) An analyst to whom a portion of a sample of blood or a non-invasive sample is submitted for analysis under clause 265 or 266 may carry out an analysis in accordance with the arrangement made by the authorised person under clause 265(4) or clause 266(4), as the case may be.

(2) The analysis must be carried out, and a report provided, in accordance with—

(a) AS/NZS 4308, except as provided by paragraph (b), or



- (b) another procedure directed by the Commissioner.

## **Division 4 Evidence**

### **268 Certificate evidence of concentration of alcohol in breath or blood determined by breath test or breath analysis**

- (1) For the purposes of any disciplinary procedure relating to misbehaviour with alcohol, a certificate purporting to be signed by an authorised person and certifying that—
  - (a) the authorised person is a duly appointed authorised person, and
  - (b) the person named in the certificate underwent a breath test, and
  - (c) the breath test was carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the *Road Transport Act 2013*, and
  - (d) the breath test was carried out on the day and completed at the time stated in the certificate, and
  - (e) a concentration of alcohol, determined by the breath test and expressed in grams of alcohol per 210 litres of breath (or its equivalent in grams of alcohol per 100 millilitres of blood), was present in the breath of that person on the day and at the time stated in the certificate, and
  - (f) a statement in writing required by clause 263(1) was delivered in accordance with that subclause,

is prima facie evidence of the particulars certified in and by the certificate.

- (2) For the purposes of any disciplinary procedure relating to misbehaviour with alcohol, a certificate purporting to be signed by an authorised person and certifying that—
  - (a) the authorised person is a duly appointed authorised person, and
  - (b) the person named in the certificate submitted to a breath analysis, and
  - (c) the breath analysis was carried out by a breath analysing instrument within the meaning of Division 5 of Part 11 of the Act, and
  - (d) the analysis was made on the day and completed at the time stated in the certificate, and
  - (e) a concentration of alcohol, determined by the breath analysing instrument and expressed in grams of alcohol per 210 litres of breath (or its equivalent in grams of alcohol per 100 millilitres of blood), was present in the breath of that person on the day and at the time stated in the certificate, and

(f) a statement in writing required by clause 263(3) was delivered in accordance with that subclause,

is prima facie evidence of the particulars certified in and by the certificate.

- (3) For the purposes of any disciplinary procedure relating to misbehaviour with alcohol, evidence of the condition of a device by means of which a breath test was carried out or of a breath analysing instrument or the way in which the device or instrument was operated is not to be required unless evidence that the device or instrument was not in proper condition or was not properly operated has been adduced.
- (4) For the purposes of any disciplinary procedure relating to misbehaviour with alcohol, evidence may be given of the concentration of alcohol present in the staff member's breath, as determined by a device by which a breath test was carried out or by a breath analysing instrument operated by an authorised person.
- (5) The concentration of alcohol so determined is taken to be the concentration of alcohol in the staff member's breath when the staff member presented for duty if the breath analysis was made within 3 hours of the staff member presenting for duty on the particular day, unless the staff member proves that the prescribed concentration of alcohol was not present in the staff member's breath at that time.
- (6) The concentration of alcohol so determined is taken to be the concentration of alcohol in the staff member's breath while the staff member was on duty if the breath analysis was made within 3 hours of the staff member ceasing to be on duty on the particular day, unless the staff member proves that the prescribed concentration of alcohol was not present in the staff member's breath at that time.

**269 Certificate evidence of concentration of alcohol in blood otherwise than in relation to a breath test or breath analysis**

- (1) For the purposes of any disciplinary procedure relating to misbehaviour with alcohol, a certificate purporting to be signed by a medical practitioner or registered nurse and certifying any one or more of the following matters—
  - (a) that the practitioner or nurse was a medical practitioner or registered nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the person's blood or took from, or was provided with, a non-invasive sample in accordance with Division 5 of Part 11 of the Act on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with Division 5 of Part 11 of the Act and this Part,
  - (d) that the practitioner or nurse used equipment of a specified description in so taking and dealing with the sample,

- (e) that the container into which the sample was placed was sealed, and marked or labelled, in a specified way,

is prima facie evidence of the particulars certified in and by the certificate.

- (2) For the purposes of any disciplinary procedure relating to misbehaviour with alcohol, a certificate purporting to be signed by an authorised person and certifying any one or more of the following matters—

- (a) that the authorised person received a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from the specified person and taken in accordance with Division 5 of Part 11 of the Act and this Part,
- (b) that the authorised person arranged for the portion to be submitted for analysis by an analyst to determine whether the sample indicated that the blood of the staff member by whom the sample was provided or from whom the sample was taken contained alcohol, and if so, the concentration of alcohol in the staff member's blood,
- (c) that the container into which the sample was placed was sealed, and marked or labelled, in a specified way,

is prima facie evidence of the particulars certified in and by the certificate.

- (3) For the purposes of any disciplinary procedure relating to misbehaviour with alcohol, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters—

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from the specified person in a container submitted for analysis under Division 5 of Part 11 of the Act and this Part,
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified way,
- (c) that, on receipt by the analyst of the container, the seal was unbroken,
- (d) that the analyst carried out an analysis of the portion to determine whether the sample indicated that the blood of the staff member by whom the sample was provided or from whom the sample was taken contained alcohol, and if so, the concentration of alcohol in the staff member's blood,
- (e) that the concentration of alcohol in the staff member's blood determined by the analysis and expressed in grams of alcohol in 100 millilitres of blood was present in that sample,
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of

this Part,

is prima facie evidence of the matters set out in subclause (4).

- (4) A certificate under subclause (3) is prima facie evidence—
  - (a) of the particulars certified in and by the certificate, and
  - (b) that the sample was a portion of the sample of the blood of that specified person or a non-invasive sample provided by or taken from the specified person, and
  - (c) that the portion had not been tampered with before it was received by the analyst.
- (5) For the purposes of any disciplinary procedure relating to misbehaviour with alcohol, evidence may be given of the concentration of alcohol present in the blood or other biological material of the staff member, as determined by an analysis under Division 5 of Part 11 of the Act of a portion of a sample of the staff member's blood or a non-invasive sample provided by or taken from the staff member, as the case may be.
- (6) The concentration of alcohol so determined is taken to be the concentration of alcohol in the staff member's blood when the staff member presented for duty if that sample of blood or non-invasive sample was taken within 3 hours of the staff member presenting for duty, unless the staff member proves that the prescribed concentration of alcohol was not present in the staff member's blood at that time.
- (7) The concentration of alcohol so determined is taken to be the concentration of alcohol in the staff member's blood while the staff member was on duty if that sample of blood or non-invasive sample was taken while the staff member was on duty or within 3 hours of the staff member ceasing to be on duty on the particular day, unless the staff member proves that the prescribed concentration of alcohol was not present in the staff member's blood at that time.

#### **270 Certificate evidence of presence of a prohibited drug**

- (1) For the purposes of any disciplinary procedure relating to misbehaviour with drugs, a certificate purporting to be signed by a medical practitioner or registered nurse and certifying any one or more of the following matters—
  - (a) that the practitioner or nurse was a medical practitioner or registered nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the staff member's blood or was provided with or took a non-invasive sample from the staff member in accordance with Division 5 of Part 11 of the Act and this Part on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with clause 265 or 266,

is prima facie evidence of the particulars certified in and by the certificate.

(2) For the purposes of any disciplinary procedure relating to misbehaviour with drugs, a certificate purporting to be signed by a person and certifying any one or more of the following matters—

(a) that the person was provided with or took a non-invasive sample from a specified person in accordance with Division 5 of Part 11 of the Act and this Part on the day and at the time stated in the certificate,

(b) that the person dealt with the sample in accordance with clause 267,

is prima facie evidence of the particulars certified in and by the certificate.

(3) For the purposes of any disciplinary procedure relating to misbehaviour with drugs, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters—

(a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or a non-invasive sample provided by or taken from a specified person in a container submitted for analysis under Division 5 of Part 11 of the Act and this Part,

(b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified way,

(c) that, on receipt by the analyst of the container, the seal was unbroken,

(d) that the analyst carried out an analysis of the portion to determine whether any prohibited drug was present in the sample,

(e) that a specified prohibited drug ascertained by the analysis was present in that portion,

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Part,

is prima facie evidence of the matters set out in subclause (4).

(4) A certificate under subclause (3) is prima facie evidence—

(a) of the particulars certified in and by the certificate, and

(b) that the portion was a portion of the sample of that specified person's blood or a non-invasive sample provided by, or taken from, that specified person, and

(c) that the portion had not been tampered with before it was received by the analyst.

(5) For the purposes of any disciplinary procedure relating to misbehaviour with drugs,

evidence may be given of the presence of a prohibited drug in the blood or other biological material of the staff member, as determined by an analysis under Division 5 of Part 11 of the Act of a portion of a sample of the person's blood or a non-invasive sample provided by or taken from the staff member.

- (6) The prohibited drug the presence of which is so determined, is taken to have been present in the blood or other biological material of the staff member when the staff member presented for duty, if the sample was taken or provided within 24 hours of the time the staff member last presented for duty, unless the staff member proves the absence, at that time, of the drug.
- (7) The prohibited drug the presence of which is so determined, is taken to have been present in the blood or other biological material of the staff member while the staff member was on duty if the sample was taken or provided within 24 hours of the later of the time the staff member last was involved in an incident referred to in section 236F(3) of the Act (if any such incident occurred) or the staff member last ceased to be on duty, unless the staff member proves the absence, at that time, of the drug.

#### **271 Certificate evidence of appointment of authorised person**

For the purposes of any disciplinary procedure involving a contravention of a provision of this Part or in proceedings for an offence under this Part, a certificate purporting to be signed by the Commissioner and certifying that the person named in the certificate was an authorised person at a particular time is prima facie evidence of the particulars certified in and by the certificate.

### **Division 5 Consequences**

#### **272 Refusing to comply with a requirement under Division 5 of Part 11 of the Act**

- (1) A member of correctional staff must not refuse—
  - (a) to undergo a breath test, or
  - (b) to submit to a breath analysis, or
  - (c) to provide, or enable to be taken, a non-invasive sample from the staff member, or
  - (d) to comply with any other requirement of or under Division 5 of Part 11 of the Act, in accordance with a direction given under Division 5 of Part 11 of the Act by an authorised person.
- (2) This clause does not prevent a member of correctional staff so refusing if the staff member is unable on medical grounds to do otherwise.

**273 Immediate action: staff member relieved from duty**

- (1) If a member of correctional staff tests positive for alcohol or a member of correctional staff tests positive for a prohibited drug, the staff member, if the staff member remains on duty, is to be immediately relieved of duty and is not to carry out any duty for the duration of the staff member's shift.
- (2) The Commissioner may decide that a member of correctional staff who is relieved from duty under this clause is not entitled to be paid (whether in wages or salary, paid sick leave or any other type of payment) for that part of the relevant shift that the staff member did not work.

**274 Consequences for staff members having prescribed concentration of alcohol in breath or blood**

- (1) This clause applies if—
  - (a) a member of correctional staff (other than a staff member on probation, a temporary employee or a casual employee) tests positive for alcohol, and
  - (b) the staff member has not tested positive for alcohol in the 3 years immediately preceding the test referred to in paragraph (a).
- (2) The Commissioner may ask the staff member to elect to undergo counselling and rehabilitation or to elect not to undergo counselling and rehabilitation and face the possibility that the Commissioner may deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.
- (3) If the staff member elects to undergo counselling and rehabilitation, the Commissioner may direct the staff member—
  - (a) to attend any interview organised with a person nominated by the Commissioner, and
  - (b) to attend an interview with an approved counsellor for assessment, and
  - (c) to participate in any rehabilitation program recommended by the counsellor.
- (4) If the staff member—
  - (a) elects not to undergo counselling or rehabilitation, or
  - (b) without reasonable excuse, fails to attend an interview or counselling session after electing to do so, or
  - (c) without reasonable excuse, fails to participate in a rehabilitation program recommended by the approved counsellor referred to in subclause (3)(c),the Commissioner may deal with the matter under section 68 or 69 of the *Government*

*Sector Employment Act 2013.*

- (5) The Commissioner is not required to ask the staff member to elect to undergo counselling and rehabilitation or to elect not to undergo counselling and rehabilitation if the Commissioner, having regard to all the circumstances, considers that it would be more appropriate to deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.

**275 Consequences for staff members testing positive at least twice in 3 years**

- (1) This clause applies if—
- (a) a member of correctional staff (other than a staff member on probation, a temporary employee or a casual employee) tests positive for alcohol, and
  - (b) the staff member has tested positive for alcohol in the 3 years immediately preceding the test referred to in paragraph (a).
- (2) The Commissioner may deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.
- (3) The Commissioner may refer the staff member to a medical practitioner for the purpose of the medical practitioner determining the staff member's fitness to remain a staff member.
- (4) The Commissioner is to have regard to any report made by the medical practitioner in relation to the staff member.

**276 Consequences for staff members testing positive for prohibited drugs**

- (1) This clause applies if—
- (a) a member of correctional staff (other than a staff member on probation, a temporary employee or a casual employee) tests positive for a prohibited drug, and
  - (b) the staff member has not tested positive for a prohibited drug in the 3 years immediately preceding the test referred to in paragraph (a).
- (2) The Commissioner may ask the staff member to elect to undergo counselling and rehabilitation with an approved counsellor or to elect not to undergo counselling and rehabilitation and face the possibility that the Commissioner may deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.
- (3) If the staff member elects to undergo counselling and rehabilitation, the Commissioner may direct the staff member—
- (a) to attend any interview organised with a person nominated by the Commissioner, and



- (b) to attend an interview with an approved counsellor for assessment, and
- (c) to participate in any rehabilitation program recommended by that counsellor.

(4) If the staff member—

- (a) elects not to undergo counselling or rehabilitation, or
- (b) without reasonable excuse, fails to attend an interview or counselling session after electing to do so, or
- (c) without reasonable excuse, fails to participate in a rehabilitation program recommended by the approved counsellor referred to in subclause (3)(c),

the Commissioner may deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.

- (5) The Commissioner is not required to ask the staff member to elect to undergo counselling and rehabilitation or to elect not to undergo counselling and rehabilitation if the Commissioner, having regard to all the circumstances, considers that it would be more appropriate to deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.

**277 Consequences for staff members testing positive for a prohibited drug more than once in 3 years**

(1) This clause applies if—

- (a) a member of correctional staff (other than a staff member on probation, a temporary employee or a casual employee) tests positive for a prohibited drug, and
- (b) the staff member has tested positive for a prohibited drug in the 3 years immediately preceding the test referred to in paragraph (a).

- (2) The Commissioner may deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.

- (3) The Commissioner may refer the staff member to a medical practitioner for the purpose of the medical practitioner determining the staff member's fitness to remain a staff member.

- (4) The Commissioner is to have regard to any report made by the medical practitioner in relation to the staff member.

**278 Staff members on probation**

- (1) If a member of correctional staff who is on probation tests positive for alcohol or tests positive for a prohibited drug, the Commissioner may—

- (a) direct the staff member to attend an interview with an approved counsellor for assessment and to participate in any rehabilitation program recommended by that counsellor, or
  - (b) deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.
- (2) If the staff member fails, without reasonable excuse, to attend an interview or counselling session after being directed to do so or, without reasonable excuse, fails to participate in any rehabilitation program recommended by an approved counsellor referred to in subclause (1)(a), the Commissioner may deal with the matter under section 68 or 69 of the *Government Sector Employment Act 2013*.
- (3) The Commissioner may at any time refer the staff member to a medical practitioner for the purpose of the medical practitioner determining the staff member's fitness for duty.
- (4) The Commissioner is to have regard to any report made by the medical practitioner in relation to the staff member.

#### **279 Temporary or casual staff members**

- (1) If a member of correctional staff who is a temporary employee or a casual employee tests positive for alcohol or tests positive for a prohibited drug, the Commissioner may direct the staff member to attend an interview with an approved counsellor for assessment and to participate in any rehabilitation program recommended by that counsellor.

**Note—**

Under section 47(2) of the *Government Sector Employment Act 2013* the employment of a temporary employee or casual employee may be terminated.

- (2) The Commissioner may at any time refer the staff member to a medical practitioner for the purpose of the medical practitioner determining the staff member's fitness for duty.
- (3) The Commissioner is to have regard to any report made by the medical practitioner in relation to the staff member.

#### **280 Double jeopardy**

A member of correctional staff is not liable to be punished or disciplined under this Division for both—

- (a) testing positive for alcohol or testing positive for a prohibited drug, and
- (b) contravening clause 272(1).

### **281 Disciplinary action**

Nothing in this Part limits any action that may be taken under the *Government Sector Employment Act 2013* in respect of a member of correctional staff.

**Note—**

For example, see section 47 of the *Government Sector Employment Act 2013* for the grounds on which employment of a Public Service non-executive employee may be terminated.

## **Division 6 Offences**

### **282 Interfering with results of test**

A person who does anything to introduce, or alter the concentration of, alcohol or any prohibited drug in a member of correctional staff's breath, blood or other biological material, before the staff member undergoes a test under Division 5 of Part 11 of the Act, is guilty of an offence if the person does so for the purpose of preventing or restricting the use of the results of the test in any disciplinary procedure involving a contravention of this Part.

Maximum penalty—20 penalty units.

### **283 Interfering or tampering with, or destroying, samples**

A person must not interfere or tamper with, or destroy, a sample of blood or a non-invasive sample provided by or taken from a member of correctional staff under Division 5 of Part 11 of the Act unless the sample is destroyed—

- (a) by or at the direction of an analyst in the course of or on completion of analysis, or
- (b) in the case of a sample handed to a person on behalf of a member of correctional staff, by or at the direction of the person, or
- (c) after the expiration of 12 months commencing on the day on which the sample was taken or provided, or a longer period (being no more than 5 years) as directed by the Commissioner in respect of the sample in a direction made before the expiration.

Maximum penalty—20 penalty units.

## **Part 18 Justice Health and Forensic Mental Health Network matters**

### **284 Examination of inmates**

- (1) An inmate is to be examined by a prescribed health officer as soon as practicable after being received into a correctional centre.
- (2) Without limiting subclause (1), a prescribed health officer may at any time carry out an examination of an inmate (but only with the consent of the inmate) if of the opinion that it is necessary for the examination to be carried out.

### **285 Inmates' risk to self or others**

As soon as practicable after forming an opinion—

- (a) that the mental or physical condition of an inmate constitutes a risk to the life of the inmate or to the life, health or welfare of any other person, or
- (b) that the life of an inmate will be at risk if the inmate continues to be detained in a correctional centre, or
- (c) that, because of illness, an inmate will not survive sentence or is totally and permanently unfit for correctional centre discipline, or
- (d) that an inmate should not, on medical grounds, be employed at work of a particular nature, or
- (e) that, because of an inmate's medical condition, the inmate is unfit to travel or should only travel by particular means,

a prescribed health officer must report that he or she has formed the opinion, and the grounds for the opinion, to a prescribed CSNSW officer.

### **286 Mental illness**

- (1) As soon as practicable after forming an opinion that the mental state of an inmate requires special observation, a prescribed health officer must report that he or she has formed the opinion, and the grounds for the opinion, to a prescribed CSNSW officer.
- (2) On receiving a report referred to in subclause (1), the prescribed CSNSW officer—
  - (a) must ensure the inmate is placed under special observation, and
  - (b) in the case of a report with respect to a serious offender, must send written notice of the report to the Review Council.

### **287 Inmates' diet, exercise and treatment**

- (1) As soon as practicable after forming an opinion that an inmate's diet, exercise or other treatment should be varied or modified for reasons of health, a prescribed health officer must report that he or she has formed the opinion, and the grounds for the opinion, to a prescribed CSNSW officer.
- (2) On receiving a report referred to in subclause (1), the prescribed CSNSW officer—
  - (a) must take the steps that are reasonable to carry into effect any recommendation contained in the report, and
  - (b) in the case of a report with respect to a serious offender, must ensure that written particulars of the report are kept available for reference by the Review Council.

- (3) If it is impracticable to carry a recommendation into effect, the prescribed CSNSW officer must report that fact to the Chief Executive, Justice Health and Forensic Mental Health Network.

### **288 Medical records**

- (1) Proper medical records are to be kept in respect of each inmate, with entries as to each examination that is carried out on an inmate by a prescribed health officer.
- (2) The medical records for inmates at a correctional centre are to be kept at the centre in the custody of a prescribed health officer, and their contents are not to be divulged to any person outside Justice Health and Forensic Mental Health Network (including the inmate) except in accordance with guidelines established by the Chief Executive, Justice Health and Forensic Mental Health Network.
- (3) Subclause (2) does not prevent information in an inmate's medical records being used to prepare general reports on the inmate's health for submission to the governor of a correctional centre, and any such report must be prepared and submitted whenever the governor so requests.
- (4) As soon as practicable after an inmate is transferred from one correctional centre to another, the inmate's medical records are to be given into the custody of a prescribed health officer at the centre to which the inmate is transferred.
- (5) Subclause (4) does not apply if the inmate is temporarily transferred to a police station or court cell complex.

### **289 Provision of medical care to inmates confined to cell**

An inmate who is confined to cell for the purposes of punishment, or under a segregated or protective custody direction, must be kept under daily observation by a prescribed health officer and have access to essential medical care.

### **290 Infectious diseases**

- (1) As soon as practicable after forming an opinion that an inmate has, or appears to have, a serious infectious disease, a prescribed health officer must report that he or she has formed the opinion, and the grounds for the opinion, to a prescribed CSNSW officer.
- (2) In the case of a report from the Chief Executive, Justice Health and Forensic Mental Health Network, the prescribed CSNSW officer must carry into effect any recommendation contained in the report in so far as it is practicable to do so.
- (3) If it is impracticable to carry a recommendation into effect, the prescribed CSNSW officer must report that fact to the Chief Executive, Justice Health and Forensic Mental Health Network.

- (4) In this clause, ***serious infectious disease*** means an infectious disease that is also a notifiable disease by virtue of its inclusion in Schedule 2 to the [Public Health Act 2010](#).

### **291 Death of inmates**

On becoming aware that an inmate has died, a prescribed health officer must report the death to the Commissioner.

## **Part 19 Use of firearms**

### **292 Authority to carry firearms**

- (1) A correctional officer must not carry firearms while on duty except as authorised by or under this Part.
- (2) A correctional officer to whom firearms have been issued under this Part is authorised to carry them for the purpose only for which they were issued.
- (3) A correctional officer is authorised to carry firearms—
  - (a) while handling firearms in the course of duties carried out in a correctional centre armoury, or
  - (b) while taking part in, or in an activity necessarily carried out in connection with, an approved training course.

### **293 Armed posts**

- (1) A correctional centre is to have the armed posts that are approved in respect of the centre.
- (2) A correctional officer, while stationed at an armed post, may carry the firearms the governor directs.

### **294 Issue of firearms to correctional officers not at armed posts**

- (1) The governor of a correctional centre or the principal security officer may (by a direction given generally or in any particular case) authorise the issue of firearms to correctional officers who are not stationed at armed posts for use in connection with—
  - (a) the escorting of inmates, or
  - (b) the maintenance of a guard outside a correctional centre.
- (2) The Commissioner may (by a direction given in a particular case) authorise the issue of firearms to correctional officers for use in connection with patrols of the perimeter of a correctional centre.
- (3) The governor of a correctional centre may (by a direction given in a particular case) authorise the issue of firearms to correctional officers who are not stationed at armed

posts—

(a) for use in connection with the quelling or control of a correctional centre disturbance or riot, or

(b) for any other purpose for which the governor considers it necessary that firearms be issued.

(4) The following persons may (by a direction given in a particular case) authorise the issue of firearms to correctional officers who are not stationed at armed posts for use in connection with the conveyance of money or other property within a correctional centre or between a correctional centre and other places—

(a) the Commissioner,

(b) the principal security officer,

(c) the governor of a correctional centre.

#### **295 Officers handling firearms to undergo training courses**

(1) A correctional officer must not—

(a) authorise or direct the issue of a firearm to another correctional officer, or

(b) issue a firearm to another correctional officer,

for use by the other officer unless the other officer has undergone an approved training course in the use of that firearm.

(2) A correctional officer must ensure that a correctional officer under his or her control does not perform any duty involving the carrying or use of a firearm unless the officer has undergone an approved training course in the use of the firearm.

(3) This clause does not prevent the performance by a correctional officer of a duty in connection with an approved training course or the issue to the officer of a firearm for that purpose.

#### **296 Safety procedures on issue or receipt of firearms**

(1) On commencing a duty involving the carrying of a firearm, a correctional officer must examine the firearm (and any accompanying ammunition) in the presence of the person from whom the officer receives the firearm.

(2) An examination must include any approved procedures.

(3) If a correctional officer discovers, on an examination—

(a) a defect in any firearm or ammunition, or

(b) an incorrect number of rounds of ammunition,

the officer must report the fact to the officer in charge of the correctional centre armoury from which the firearm was drawn.

- (4) The officer in charge of the correctional centre armoury must substitute another firearm or new ammunition, or supplement the number of rounds, as the case requires.

### **297 Safety procedures on return of firearms**

- (1) On ceasing a duty involving the carrying of a firearm, a correctional officer must deliver the firearm (and any accompanying ammunition) to the officer in charge of the correctional centre armoury from which the firearm was drawn (unless the correctional officer has delivered it to another correctional officer by whom he or she has been relieved).
- (2) An officer to whom a firearm is delivered must examine it, and any accompanying ammunition, in the presence of the person from whom they are received.
- (3) The examination must include any approved procedures.

### **298 Duties of correctional officers generally**

While carrying a firearm on duty, a correctional officer—

- (a) must at all times be alert, and
- (b) must maintain the firearm and its ammunition in the condition, and with the safety precautions regarding its carriage, use and readiness to fire, as are approved, and
- (c) must not deface the firearm or any of its accessories or ammunition, and
- (d) must not make modifications to the firearm or to its ammunition.

### **299 Maintenance of safe distances**

- (1) While stationed at an armed post, a correctional officer must take all reasonable precautions to prevent any inmate from approaching within 10 metres of the officer or any firearm or ammunition that is in the officer's custody or at the post.
- (2) While carrying a firearm, a correctional officer must not—
- (a) place himself or herself in a position where he or she is liable to be attacked, or
- (b) except when outside a correctional centre or where the governor otherwise directs, approach to within reach of an inmate or allow an inmate to approach to within reach of him or her.



### **300 Transfer of firearms**

- (1) A correctional officer who parts with possession of a firearm issued to the officer—
  - (a) must deliver it to another correctional officer or some other suitable person, or
  - (b) if the officer cannot so deliver it, must deposit it in the most secure place available in the circumstances.
- (2) Subclause (1) does not apply to an officer on duty at an armed post or to an officer returning or transferring a firearm on ceasing duty.

### **301 Use of armed posts**

- (1) While stationed at an armed post, a correctional officer—
  - (a) must keep a lookout over the correctional centre generally, and
  - (b) if the officer observes any irregularity likely to affect the security of the correctional centre, must notify other correctional officers as may be appropriate in the circumstances, and
  - (c) must assist other correctional officers in the performance of their duties, but (unless the officer is a senior officer, or is ordered to do otherwise by a senior officer) without leaving the post.
- (2) A correctional officer stationed at a correctional centre tower who is temporarily unable to keep a lookout must indicate that fact to—
  - (a) any correctional officers stationed at adjacent towers, and
  - (b) any correctional officers stationed at ground posts within range of observation.
- (3) When approaching an armed post, a correctional officer must give warning of that approach to any correctional officer stationed at the post.

### **302 Discharge of firearms**

A correctional officer must not discharge a firearm while on duty except in the performance of that duty.

### **303 Authority to discharge firearms**

- (1) A correctional officer may discharge a firearm—
  - (a) to protect the officer or any other person if the officer believes on reasonable grounds that there is a substantial probability that the officer or other person will be killed or seriously injured if the officer does not discharge the firearm, or
  - (b) if the officer believes on reasonable grounds that it is necessary to do so in

order—

(i) to prevent the escape of an inmate, or

(ii) to prevent an unlawful attempt to enter a correctional centre or to free an inmate, or

(iii) to attract the immediate attention of correctional officers or other persons to a serious breach of correctional centre security that has arisen or is likely to arise, or

(c) to give a warning in accordance with this Regulation.

(2) Despite subclause (1), a correctional officer must not discharge a firearm at a person if the officer has reasonable grounds to believe that the shot may hit a person other than the person at whom it is directed.

### **304 Warnings**

(1) A correctional officer must not discharge a firearm in the direction of a person unless the officer has first given a warning to that person of the intention to fire.

(2) For the purposes of subclause (1), and without prejudice to any other way in which a warning may be given, a warning shot is a warning.

(3) A warning shot must be fired in a direction in which no one is likely to be hit by it.

(4) A correctional officer may, without giving a warning, discharge a firearm in order to protect the officer or any other person if of the opinion that—

(a) there is a substantial probability that the officer or other person will be killed or seriously injured if the officer does not do so, and

(b) a warning would only increase that probability.

### **305 Notice of discharge**

(1) A correctional officer who discharges a firearm while on duty at a correctional centre, otherwise than while taking part in—

(a) an approved training course, or

(b) a firearms practice exercise authorised by the governor, or

(c) an activity connected with a training course or practice exercise referred to in paragraph (a) or (b),

must notify the governor of the circumstances in which it was discharged.

(2) A correctional officer who discharges a firearm while on escort duty must notify a

police officer and—

- (a) the governor of the correctional centre at which the officer is usually on duty, or
- (b) if the correctional officer is a member of a Security Unit, the officer in charge of that Unit,

of the circumstances in which it was discharged.

- (3) On being notified, the governor or the officer in charge of the Security Unit is to report the circumstances of the discharge to the Commissioner.
- (4) On receiving the report the Commissioner may hold an inquiry into the discharge.
- (5) The Commissioner must submit a full report of the findings of any inquiry to the Minister.

### **306 Use of correctional centre armouries for storage of private firearms**

Nothing in this Part prevents a correctional centre armoury from being used for the storage of any firearm in respect of which a correctional officer holds a licence under the [Firearms Act 1996](#).

## **Part 20 Bravery and meritorious service awards**

### **307 Awards**

- (1) The various awards specified in Schedule 5 may be given to correctional officers and departmental officers by the Commissioner in the circumstances specified in the Schedule in relation to the awards.
- (2) Awards may be given posthumously.
- (3) A Bravery Medal takes precedence over all other awards.

### **308 Cancellation of awards**

- (1) The Commissioner may cancel an award or restore a cancelled award.
- (2) A person who is notified that an award has been cancelled must return it, together with any associated ribbons or bars, to the Commissioner.

### **309 Register of awards**

The Commissioner is to maintain a register of awards.

### **310 Wearing of awards**

- (1) Awards may be worn on ceremonial occasions.
- (2) The ribbon indicating the giving of an award—

- (a) may be worn by a correctional officer on duty, and
  - (b) must be worn on the left breast of the correctional officer's uniform.
- (3) A correctional officer or departmental officer must not wear an award, or the ribbon indicating the giving of an award, to which the officer is not entitled.

## **Part 21 The Review Council**

### **311 Additional functions of Review Council**

- (1) For the purposes of section 197 of the Act, the functions of the Review Council include the provision, at the request of the Commissioner, of reports, advice and recommendations to the Commissioner with respect to—
- (a) the management of serious offenders, and
  - (b) the probability that a serious offender—
    - (i) who is serving an existing life sentence, and
    - (ii) who has applied for a local leave permit,will be fit to be released on parole at the time the Council expects to advise the Parole Authority about release on parole (assuming the serious offender satisfactorily completes a pre-release development program to which the application relates of at least 12 months or other relevant period), and
  - (c) the designation of inmates as high security, extreme high security, extreme high risk restricted and national security interest inmates (including the revocation or variation of a designation), and
  - (d) the management of high security, extreme high security, extreme high risk restricted and national security interest inmates (including the periodic review of that management), and
  - (e) other matters specified by the Commissioner.
- (2) For the purposes of section 197 of the Act, the functions of the Review Council also include the carrying out of investigations (that may include the interviewing of correctional centre staff and inmates) that are necessary to enable it to provide reports, advice and recommendations referred to in subclause (1).
- (3) In accordance with clause 10(2)(c) of Schedule 2 to the Act—
- (a) the provision of reports, advice and recommendations referred to in subclause (1), and
  - (b) the conduct of investigations referred to in subclause (2),

are prescribed as functions that the Council may delegate to a committee of the Council.

- (4) In this clause, **existing life sentence** has the same meaning as it has in Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*.

### **312 Matters to be considered concerning certain serious offenders**

For the purposes of section 199(2) of the Act, the following provisions are prescribed—

- (a) section 197(2)(a), (e) and (f) of the Act,
- (b) clauses 17, 22, 28, and 311.

### **313 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.

### **314 Records of proceedings**

- (1) The Review Council must keep a record (in writing or otherwise) of the proceedings of the Review Council, including a record of—
  - (a) the persons appearing or represented before the Review Council, and
  - (b) the submissions, if any, made by a person referred to in paragraph (a), and
  - (c) the reasons, if any, stated in support of the submissions.
- (2) In keeping a record of proceedings, the Review Council may take the steps 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.

## **Part 22 General provisions**

### **315 Correctional centre records**

- (1) The governor of a correctional centre must ensure that a record of the following is kept at the centre—
  - (a) each correctional officer, departmental officer, medical officer or nursing officer employed within the centre (including that person's position and position description),
  - (b) each Commissioner's instruction issued in connection with the administration of

the centre or of correctional centres generally,

- (c) each direction given by the governor in connection with the administration of the centre,
  - (d) each inmate who is confined to cell (including the reason for his or her confinement),
  - (e) each inmate who is kept in segregated or protective custody (including the reason for his or her being so kept and of any deprivation of rights or privileges to which the inmate is subject as referred to in section 12(2)(b) of the Act),
  - (f) the death of any inmate that occurs while the inmate is in the governor's custody (whether at the centre or elsewhere),
  - (g) any escape or attempted escape by an inmate that occurs while the inmate is in the governor's custody (whether at the centre or elsewhere),
  - (h) other information for which the Commissioner may require a record to be kept.
- (2) The governor of a correctional centre must conduct a daily inspection of all inmates who are confined to cell.

**316 Order of ranking of correctional and other officers**

- (1) The order of ranking of correctional officers, in descending order, is as follows—

Assistant Commissioner

Director Custodial Operations

Director Security and Investigations

General Manager

Superintendent

Manager of Security

Deputy Superintendent

Senior Assistant Superintendent

Principal Correctional Officer

Assistant Superintendent

Chief Correctional Officer

Senior Correctional Officer

Correctional Officer

Casual Correctional Officer

- (2) The order of ranking of departmental officers employed in the Corrective Services Industries Branch of Corrective Services NSW, in descending order, is as follows—

Manager of Industries (Level 1) and Principal Industries Officer (Level 1)

Manager of Industries (Level 2) and Principal Industries Officer (Level 2)

Manager, Centre Services and Employment

Manager, Business Unit

Senior Overseer

Overseer

### **317 Attendance of inmates before courts and court officers**

- (1) For the purposes of the definition of **appropriate authority** in section 77(5) of the Act, a conference convenor, acting with the written authority of a conference administrator, under the [Young Offenders Act 1997](#) is prescribed.
- (2) For the purposes of the definition of **court** in section 77(5) of the Act, the following courts and bodies are prescribed—
- (a), (b) (Repealed)
  - (c) the Administrative Appeals Tribunal of the Commonwealth,
  - (d), (e) (Repealed)
  - (f) the Mental Health Review Tribunal.

### **318 Commissioner may exercise other functions**

If the Commissioner considers it necessary to do so, the Commissioner may exercise any function that, under this Regulation, may be exercised by a correctional officer or departmental officer.

### **319 Powers of correctional officers**

For the purpose of performing the duties of a custodian of offenders at a correctional centre managed in accordance with Part 12 of the Act, a person authorised under section 240 of the Act to perform the duties has and may exercise (subject to any directions of the Commissioner under section 241(2) of the Act) all the powers of a correctional officer.

### **319A Search observation staff members**

For the purposes of the definition of **search observation staff member** in section 253A of the Act, the following persons are prescribed—

- (a) if available at the place of detention or its immediate vicinity where the relevant search is to be conducted—a welfare officer, psychologist, clerk or alcohol and other drug worker (being a person who is a non-correctional member of staff),
- (b) if a person referred to in paragraph (a) is not so available—any other non-correctional member of staff.

### **319B Powers of correctional officers—restraint of visitors**

For the purposes of section 253MA(4) of the Act, flexicuffs are prescribed.

### **320 Operation of biometric identification system in correctional centres**

- (1) The Commissioner may authorise the operation in correctional centres of a biometric identification system for one or more of the following purposes—
  - (a) controlling access to the centre,
  - (b) controlling persons leaving, or attempting to leave, the centre,
  - (c) controlling access to part of the centre or the movement of persons within the centre,
  - (d) controlling access to medication in the centre,
  - (e) controlling access to equipment and other items within the centre.
- (2) A person may be required to comply with requirements relating to the operation of the system for the purpose for which the system may be used, and may be denied access to the centre, part of the centre, medication or equipment or prevented from leaving, if the person refuses to comply with a requirement.
- (3), (4) (Repealed)
- (5) This clause does not apply in respect of any person who is under the age of 18 years unless—
  - (a) the person has previously been the subject of a direction by the Commissioner under clause 108, or
  - (b) the person has been convicted of an offence in relation to a previous visit by the person to a correctional centre, or
  - (c) the correctional officer in charge of the visiting area of the correctional centre being visited by the person is of the opinion that the person's physical appearance



is similar to that of an inmate of the centre.

### **321 Privacy and security safeguards**

- (1) The Commissioner is to ensure that the following requirements are complied with in relation to the operation of an authorised biometric identification system in any correctional centre—
  - (a) any image or recording of a person's features, other than the person's photograph, must not be retained on the system, and must be deleted as soon as the person's biometric algorithm is made,
  - (b) a person's biometric algorithm must not be made, stored or kept as part of any other database that is maintained by or on behalf of Corrective Services NSW,
  - (c) the system must not be used to reconstruct a person's features from a person's biometric algorithm,
  - (d) the photograph of each visitor to a correctional centre must be eliminated from the system—
    - (i) within 6 months after the person's last recorded visit to a correctional centre, or
    - (ii) as soon as practicable at the request of the person,
  - (e) a person's biometric algorithm must not be stored in the system's database in a way that would enable unauthorised access to the information,
  - (f) permission must not be given to any person or agency that would enable any person, other than a correctional officer or departmental officer, to gain access to a person's biometric algorithm stored in the system's database.
- (2) Any person who is involved in the operation of an authorised biometric identification system must not knowingly or negligently—
  - (a) permit a person to gain access to any information in the system's database, or
  - (b) provide a person with any information in the system's database, or
  - (c) use the system to reconstruct a person's features from the person's biometric algorithm.
- (3) This clause does not prevent access to a person's photograph or personal details being given to—
  - (a) the Commissioner, or
  - (b) the principal officer, however described, of a law enforcement agency, or

(c) any person involved in the operation, maintenance, repair or replacement of the system.

(4) For the purposes of this clause, a person's **features** are taken to include all aspects of the person's physical characteristics (for example, fingerprints and iris scans) and all aspects of a person's behavioural characteristics (for example, tone of voice and style of handwriting).

### **322 Smoking and possession of smoking-related items in correctional centres and residential facilities**

(1) A person must not when in a correctional centre or residential facility—

- (a) smoke, or
- (b) use tobacco in any form, or
- (c) use an e-cigarette.

Maximum penalty—1 penalty unit.

(2) Subclause (1) does not apply in relation to a resident of a correctional centre or residential facility smoking, or using tobacco or an e-cigarette, in an area of the centre or facility designated under subclause (4A)(a).

(3) A person must not have tobacco in any form, or any tobacco-related accessory, e-cigarette or e-cigarette accessory, in his or her possession within—

- (a) a correctional centre if the person is an inmate, or
- (b) an area of a correctional centre that is designated under subclause (4A)(b) if the person is not an inmate.

Maximum penalty—5 penalty units.

#### **Note—**

Failure by an inmate to comply with subclause (1) or (3) is a correctional centre offence.

(4) Subclause (3)(a) does not apply in relation to the possession of any thing within a correctional centre by an inmate if the inmate has the thing in his or her possession—

- (a) on first arriving for admission into the correctional centre and the admission procedures relating to the surrender of property by the inmate have not yet been completed, or
- (b) because it has been returned to the inmate in accordance with this Regulation, including in connection with the release of the inmate from custody.

(4A) The Commissioner may designate—

- (a) an area of a correctional centre or residential facility as an area in which residents may smoke, or use tobacco or an e-cigarette, or
- (b) an area of a correctional centre as an area in which no person may have any tobacco, tobacco-related accessory, e-cigarette or e-cigarette accessory in his or her possession.

(4B) An area is to be designated under this clause by signs or notices displayed in, or at entrances to, the area.

(5) (Repealed)

(6) In this clause—

**e-cigarette** means a device that is designed to generate or release an aerosol or vapour (whether or not containing nicotine) by electronic means for inhalation by its user in a manner that replicates, or produces an experience similar to, the inhalation of smoke from an ignited tobacco product or ignited non-tobacco smoking product.

**e-cigarette accessory** means—

- (a) a cartridge, capsule or other container designed to contain a liquid, aerosol, gas, vapour or other substance for use in an e-cigarette, or
- (b) a heating element designed for use in an e-cigarette.

**non-tobacco smoking product** and **tobacco product** have the same meanings as in the [Public Health \(Tobacco\) Act 2008](#).

**resident** of a correctional centre or residential facility includes any of the following persons accommodated at the centre or facility and does not include an inmate—

- (a) a person who is the subject of a community-based order (within the meaning of section 236M of the Act),
- (b) a correctional officer,
- (c) a residential facility officer.

**tobacco-related accessory** means anything that it is reasonable to assume will be used to facilitate the smoking or use of tobacco such as a match, a lighter or a smoking accessory within the meaning of the [Public Health \(Tobacco\) Act 2008](#).

### **322A Unlawful possession of remotely piloted aircraft**

(1) For the purposes of section 253FA(3)(a) of the Act, the following purposes are prescribed—

- (a) law enforcement, in the person's capacity as an officer of, or person acting on

behalf of, a law enforcement agency,

- (b) administering or enforcing the Act,
- (c) dealing with a fire or other emergency.

(2) For the purposes of section 253FA(3)(b) of the Act, authorisation in writing by the Commissioner or the governor of the relevant correctional centre or correctional complex to be in possession of the remotely piloted aircraft is prescribed.

**322B Unlawful possession and operation of remotely piloted aircraft within prohibited airspace**

(1) For the purposes of section 253FB(4)(a) of the Act, the following purposes are prescribed—

- (a) law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,
- (b) administering or enforcing the Act,
- (c) dealing with a fire or other emergency.

(2) For the purposes of section 253FB(4)(b) of the Act, authorisation in writing by the Commissioner or the governor of the relevant correctional centre or correctional complex to be in possession of the remotely piloted aircraft is prescribed.

**322C Remotely piloted aircraft—detention premises**

For the purposes of paragraph (c) of the definition of **detention premises** in section 253FB(5) of the Act, the following residential facilities and transitional centres are prescribed—

- (a) Bolwara Transitional Centre, Emu Plains,
- (b) Miruma residential facility, Cessnock,
- (c) Nunyara Community Offender Support Program Centre, Malabar.

**323 Victims Register**

The Minister may require the provision of any evidence the Minister considers appropriate as proof of any alleged relationship through which a person claims to be the victim of an offender or a member of the family of a victim of an offender.

**324 Notice to victims about proposed change in security classification**

(1) A preliminary notice under section 67(1) of the Act—

- (a) is to be in writing and sent by post to the last postal address recorded on the

Victims Register for the relevant victim, unless paragraph (b) applies, or

(b) is to be given by telephone if only a telephone number has been so recorded or if the Review Council believes that a telephone number that has been recorded is more up to date than the last recorded postal address.

(2) The notice must—

(a) include the reasons for the consideration by the Review Council of a change in the security classification of the relevant offender, and

(b) indicate that a submission made by a victim must be made in writing, and

(c) specify the period for the lodgment of the submission and the address for its lodgment.

**Note—**

Under section 67(2) of the Act, the period must be at least 14 days.

(3) The Council is to keep a record of the giving of any notice in accordance with this clause.

### **325 Submissions by Commissioner**

(1) If the Commissioner notifies the Parole Authority that he or she may wish to make a submission under section 185 of the Act concerning any matter, the Parole Authority must give the Commissioner copies of the reports and other documents intended to be used by the Parole Authority in making a decision with respect to that matter.

(2) For the purposes of making a submission under section 185 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 any matters, and address the Parole Authority on any matters, that are relevant to the proceedings before the Parole Authority.

### **326 Authority to disclose certain information**

For the purposes of section 257A(1) of the Act, each of the following is prescribed as a purpose for which the Commissioner may disclose information under that subsection, if

the Commissioner considers the disclosure to be reasonably necessary for the purpose—

- (a) facilitating the exercise by a law enforcement agency, or an investigative agency (within the meaning of the *Privacy and Personal Information Protection Act 1998*), of its lawful functions,
- (b) facilitating the exercise by the Commonwealth Department of Immigration and Border Protection of its lawful functions in relation to a person who is or was an offender or person under the care, control, management or supervision of the Commissioner,
- (c) administering sentences in any Australian jurisdiction,
- (d) facilitating the execution of court orders in any Australian jurisdiction (for example, court orders for pre-sentence reports),
- (e) facilitating the service of court or tribunal documents on an offender or other person under the care, control, management or supervision of the Commissioner,
- (f) providing supervision, services or programs (including intervention programs) to an offender or other person under the care, control, management or supervision of the Commissioner,
- (g) protecting the security of, and preserving good order and discipline within, correctional facilities in this or any other State or Territory,
- (h) protecting against what the Commissioner reasonably believes is a serious threat to the peace, order or good government of the State or any other place,
- (i) assisting the NSW Trustee and Guardian to locate an offender or person under the care, control, management or supervision of the Commissioner pursuant to the exercise of the lawful functions of the NSW Trustee and Guardian,
- (j) assisting the Public Guardian to locate an offender or person under the care, control, management or supervision of the Commissioner pursuant to the exercise of the lawful functions of the Public Guardian,
- (k) assisting the head of a government sector agency (within the meaning of the *Government Sector Employment Act 2013*) to locate a person employed in the agency who is an offender or other person under the care, control, management or supervision of the Commissioner, so that the person's employment can be terminated,
- (l) assisting the Commonwealth Department of Human Services in determining the eligibility of an offender or other person under the care, control, management or supervision of the Commissioner, for a social or health related payment or service,
- (m) assisting the chief executive of the Department of Corrections of New Zealand in making an application for a public protection order under the *Public Safety (Public Protection Orders) Act 2014* of New Zealand or an extended supervision order under

the *Parole Act 2002* of New Zealand,

- (n) facilitating or assisting in the making of an application for a post-sentence order for supervision or detention under a post-sentence detention or supervision scheme of another State or Territory.

### **327 Authority to exchange certain information**

- (1) The Commissioner of Fines Administration is prescribed as a **relevant agency** for the purposes of the definition of that term in section 257A(4) of the Act.
- (2) For the purposes of section 257A(3) of the Act, the information referred to in subclause (3) is **prescribed information** in relation to the party concerned if it assists in the exercise of—
  - (a) the functions of the Commissioner under the Act or this Regulation, or
  - (b) the functions of the Commissioner of Fines Administration under the *Fines Act 1996* or the regulations under that Act.
- (3) Under an information sharing arrangement between the Commissioner and the Commissioner of Fines Administration—
  - (a) the Commissioner is authorised to request and receive information from the Commissioner of Fines Administration comprising the name, address and date of birth of a person who is an inmate and a fine defaulter (within the meaning of the *Fines Act 1996*), and details of the fine, and
  - (b) the Commissioner of Fines Administration is authorised to disclose that information to the Commissioner, and
  - (c) the Commissioner of Fines Administration is authorised to request and receive from Corrective Services NSW the following information about a person who is an inmate—
    - (i) the inmate's name (including any known aliases) and date of birth,
    - (ii) the inmate's Central Name Index number,
    - (iii) the date the inmate was taken into custody,
    - (iv) the name and address of the correctional centre in which the inmate is being held,
    - (v) the address of the inmate's usual place of residence (as recorded by Corrective Services NSW under the Act),
    - (vi) the unique identifying number assigned to the inmate by Corrective Services NSW,

- (vii) whether or not the inmate is serving a sentence,
  - (viii) if the inmate is serving a sentence, the date on which the inmate's non-parole period and full sentence are due to expire,
  - (ix) if the inmate is not serving a sentence, the date on which the inmate is due for release, and
- (d) the Commissioner is authorised to disclose that information to the Commissioner of Fines Administration.

### **328 Appointment of community corrections field officers**

- (1) The Commissioner may appoint any person who, in the Commissioner's opinion, is suitably qualified and of suitable character to exercise the functions of a community corrections field officer.

**Note—**

The functions of a community corrections field officer are determined under section 235E of the Act.

- (2) A person appointed under this clause is entitled to be paid the remuneration (including travelling and subsistence allowances) the Commissioner may determine in respect of the person, unless the person is a Public Service employee.

### **329 Procedure for breaches of community correction orders or conditional release orders—sections 107C and 108C of the Act**

- (1) If a community corrections officer is satisfied that an offender has failed to comply with any of the conditions of a community correction order or conditional release order, the community corrections officer may file a report (a **breach report**) of the matter with the relevant court. A breach report must be in writing.
- (2) The court must fix a date for the hearing of the matter, being a date that is not earlier than 14 days after, and not later than 3 months after, the date the breach report is filed.
- (3) The court may vary or waive a requirement imposed by subclause (2).
- (4) If the court fixes a date for the hearing, a copy of the breach report must be given to the offender not later than 5 days before the date fixed for hearing of the matter, unless the offender's whereabouts are unknown or the court decides to deal with the matter under subclause (6).
- (5) For the purposes of subclause (4), the copy of the breach report may be given to the offender by the court or by a community corrections officer—
- (a) by serving it or causing it to be served on the offender personally, or
  - (b) by sending it or causing it to be sent by post to the offender's address as last



known to Community Corrections, or

- (c) by email to an email address, or by other electronic means, specified by the offender for the service of documents of that kind.
- (6) The court may deal with the matter with or without parties being present and in open court or in the absence of the public.
- (7) The court—
  - (a) must cause notice of the outcome of the matter to be given to the offender, and
  - (b) must as soon as practicable after the matter is dealt with, cause notice of the outcome to be given to Community Corrections if the court—
    - (i) adds, varies or revokes a condition of a community correction order or conditional release order that is subject to a supervision condition or community service work condition, or
    - (ii) imposes a supervision condition on a community correction order or conditional release order or a community service work condition on a community correction order.
- (8) If an order of the court imposes, adds or varies a condition, the court must take reasonable steps to explain to the offender (in language that the offender can readily understand)—
  - (a) the offender's obligations under the condition, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (9) An order of the court is not invalidated by a failure to comply with subclause (8).
- (10) The court may vary or waive a requirement imposed by subclause (7)(a) or (8).
- (11) Nothing in this clause purports to prevent a court from dealing with a suspected breach if a breach report has not been filed.

## **Part 23 Special provision for COVID-19 pandemic**

### **Note—**

This Part is made under Part 15 of the Act, which commenced on 25 March 2020 in response to the COVID-19 pandemic. The Commissioner's functions in respect of visits to correctional premises and parole are limited to a period of 6 months from 25 March 2020 (or a total period of up to 12 months from that date if a longer period is prescribed by the regulations).

### **330 Classes of inmates who may be released on parole by Commissioner**

- (1) For the purposes of section 276(1)(a) of the Act, the following classes of inmates are prescribed—

- (a) an inmate whose health is at higher risk during the COVID-19 pandemic because of an existing medical condition or vulnerability, other than an excluded inmate,
  - (b) an inmate whose earliest possible release date is within 12 months, other than an excluded inmate.
- (2) The Commissioner may make an order under section 276 releasing an inmate on parole only if satisfied that it does not pose an unacceptable risk to community safety.
- (3) In this clause—

***earliest possible release date***, in relation to an inmate, means the first date on which the inmate is entitled to be released from custody or becomes eligible for release on parole.

***excluded inmate*** means any of the following—

- (a) a national security interest inmate,
- (b) a male inmate classified as Category AA, A1, A2 or E1,
- (c) a female inmate classified as Category 5 or 4 or E1.

**Note—**

Under section 276(1) of the Act, the Commissioner may release an inmate on parole if the inmate belongs to a class specified in this clause and if the Commissioner is satisfied that it is reasonably necessary because of the risk to public health or to the good order and security of correctional premises arising from the COVID-19 pandemic. Section 276(3) of the Act provides that certain inmates may not be released on parole by the Commissioner and section 276(4) of the Act requires the Commissioner to consider various factors before releasing an inmate on parole.

## **Schedule 1 Information to be recorded in relation to inmates**

(Clauses 4(1)(a), 188(1)(a), 191(1)(a) and 202(1)(a))

- 1 The inmate's full name, together with any other names by which he or she is known
- 2 The address of the inmate's usual place of residence, together with the telephone number for that address
- 3 The name, address and telephone number of the inmate's next of kin
- 4 The inmate's age and date of birth
- 5 A head-and-shoulders photograph of the inmate
- 6 A full set of the inmate's fingerprints
- 7 The inmate's biometric characteristics
- 8 Video or closed-circuit television footage of the inmate
- 9 The serial number or other identifier of the inmate's passport (if any)

- 10 A description of the inmate's general appearance, including height, weight, build, hair colour and eye colour and (if appropriate) the shape and colour of any sideburns, beard or moustache
- 11 Particulars of any distinguishing features of the inmate's appearance, including the nature and location of any tattoos
- 12 Particulars of the language or languages spoken by the inmate
- 13 Particulars of any exceptional circumstances in the inmate's family history (for example, incidents of physical or sexual abuse committed by or against the inmate)
- 14 Particulars of the state of the inmate's physical and mental health, including any medical, psychiatric or psychological reports and the results of any psychological tests, together with details of any known tendency of the inmate to attempt suicide or inflict self-harm
- 15 Particulars of any involvement by the inmate in the abuse of drugs or other intoxicating substances, including the results of any drug tests
- 16 Particulars of any ethnic or racial group to which the inmate belongs, with particular reference to whether the inmate is an Aboriginal person or Torres Strait Islander
- 17 Particulars of any religious denomination to which the inmate claims affiliation
- 18 Particulars of the inmate's trade or vocation, including the inmate's employment history
- 19 Particulars of the inmate's financial circumstances
- 20 Particulars of the inmate's domestic circumstances (that is, whether the inmate is single, married, widowed or divorced, whether the inmate has a de facto partner and whether the inmate has children or other dependants)
- Note—**
- De facto partner* is defined in section 21C of the [Interpretation Act 1987](#).
- 21 Particulars of the inmate's criminal history, both in New South Wales and elsewhere, including particulars of any period during which the inmate has been under the supervision of the Community Corrections Division, Department of Justice
- 22 Particulars of any period during which the inmate has been on release on bail
- 23 Particulars of the inmate's criminal associates

## Schedule 2 Correctional centre offences

(Clause 127)

<b>Provision</b>	<b>Subject</b>
Clause 4	Supply false or misleading particulars
Clause 7	Fail to surrender property on reception
Clause 38	Fail to clean yards

Clause 39	Fail to comply with correctional centre routine
Clause 40	Enter other cells
Clause 41	Fail to attend musters
Clause 42	Misuse of bell, hooter, siren or whistle
Clause 43	Avoid correctional centre routine
Clause 44	Unlawfully deliver or receive article to or from inmate
Clause 45	Create or possess prohibited goods
Clause 46	Resist or impede search
Clause 47	Fail to keep property tidy and orderly
Clause 52	Unlawfully purchase food
Clause 52	Possess unauthorised food
Clause 52	Unlawfully trade in food
Clause 56	Fail to maintain personal cleanliness
Clause 57	Wear improper clothing
Clause 58	Fail to keep clean cells and issued articles
Clause 58	Damage, destroy or deface cell
Clause 58	Fail to look after clothing, bedding and other issued articles
Clause 59	Unlawfully possess condom or dental dam
Clause 59	Unlawfully use condom or dental dam
Clause 59	Unlawfully dispose of condom or dental dam
Clause 61	Misbehave while attending services and programs
Clause 69	Desecrate or abuse religious objects
Clause 99	Deliver to, or receive from, visitors unauthorised articles
Clause 110	Send or receive unauthorised letters or parcels
Clause 111	Send prohibited letters or articles
Clause 112A(1)	Correspond with restricted associate
Clause 119	Unlawfully use telephone or fax
Clause 119A	Communicate with restricted associate
Clause 121	Possess camera or video or audio recording equipment or charger
Clause 122	Use or possess mobile phone, mobile phone SIM card, mobile phone charger or a part of any of those things

Clause 130	Disobey direction
Clause 134	Contravene condition of local leave order or permit or interstate leave permit
Clause 135	Conceal for purpose of escape
Clause 136	Conceal item for use in escape or other offence
Clause 137	Possess offensive weapon or instrument
Clause 138	Intimidation
Clause 139	Indecency
Clause 140	Participate, or incite other inmates to participate, in riot
Clause 141	Assault
Clause 141	Fight or engage in other physical combat
Clause 141	Throw article or operate device from which article is projected
Clause 142	Steal
Clause 142	Damage or destroy property
Clause 142	Tamper with food or drink
Clause 143	Hinder or obstruct dog
Clause 144	Cause harm to animals
Clause 145	Interfere with correctional centre property
Clause 146	Tattoo
Clause 147	Gamble
Clause 148	Possess or consume alcohol
Clause 148	Prepare or manufacture alcohol
Clause 149	Possess drug
Clause 150	Administer drug
Clause 151	Possess drug implement
Clause 152	Self-intoxication
Clause 153	Fail prescribed drug test
Clause 154	Smoke in non-smoking area
Clause 155	Bribery
Clause 156	Obstruct correctional officer
Clause 157	Refuse breath testing

Clause 159	Refuse or fail to supply drug test sample
Clause 160	Refuse or fail to supply drug test sample
Clause 171	Make mischievous complaint
Clause 184	Give false or misleading information
Clause 322	Smoke, or use tobacco or e-cigarette, when in correctional centre
Clause 322	Have possession of tobacco, tobacco-related accessory, e-cigarette or e-cigarette accessory within correctional centre

### **Schedule 3 Modifications applicable to offenders in compulsory drug treatment detention**

(Clause 195(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, 3A, 4, 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 3 of this Regulation,
- (d) clauses 33–35, 38, 61, 76, 77, 86(1), 100, 115–117, 120(2)(b), 153, 159–161, 162(b) and 180 of this Regulation,
- (e) the words “Subject to clauses 115 and 116,” in clause 118 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 compulsory drug treatment personal plan.

## Schedule 4 Forms

### Form 1

(Repealed)

### Form 2 Notice of revocation of intensive correction order/parole order

(Clause 235)

*(Crimes (Administration of Sentences) Act 1999, section 173)*

To: *(name of offender)*

TAKE NOTICE that the State Parole Authority, on *(date on which order made)*, made an order for revocation of your \*intensive correction order/\*parole order to date from *(date of revocation specified in order)*.

The State Parole Authority will reconvene on *(date)* at *(address)* in order to reconsider the revocation of the order concerned.

A copy of the revocation order is attached.

\* Copies are attached of reports and other documents used by the State Parole Authority in reaching its decision to revoke the order concerned.

You may make submissions to the State Parole Authority with respect to \*the revocation of the order concerned/\*the date of revocation of the order concerned. If you wish to do so, you must notify the Secretary of the State Parole Authority not later than *(date)*.

Signed: *(Secretary of State Parole Authority)*

Date: *(dd/mm/yyyy)*

*\*Delete if not applicable*

## Schedule 5 Awards

(Clause 307(1))

### Bravery Medal

A Bravery Medal of gold plated sterling silver with dark blue and red striped ribbon may be awarded to an officer for conduct of conspicuous merit involving an act of exceptional bravery.

In the event of any further such conduct a plain gold plated bar may be awarded to the officer. The bar is to be attached to the ribbon.

### Commendation for Brave Conduct

A Commendation for Brave Conduct (comprising two vertical royal blue stripes separated by a white stripe and with white edging, to which is attached a bronze lion's head) may be awarded to an officer for an act of bravery.

### Exemplary Conduct Cross

An Exemplary Conduct Cross of sterling silver with blue ribbon having a central yellow stripe may be awarded to an officer for conduct or service characterised by initiative, leadership or distinctive devotion to duty.

### **Unit Citation**

A Unit Citation (comprising a dark blue ribbon, with a white central band, set in a gilt metal frame) may be awarded to members of a unit who have performed outstanding service.

### **Meritorious Service Medal**

A Meritorious Service Medal of bronze with red ribbon having a central yellow stripe may be awarded to an officer for 20 years of meritorious service to Corrective Services NSW.

For the completion of each additional 5 years of service a clasp lettered with the total number of years of meritorious service may be awarded to the officer, as follows—

- (a) after 25 years of service—a clasp of bronze colour,
- (b) after 30 years of service—a clasp of silver colour,
- (c) after 35 years of service—a clasp of gold colour,
- (d) after 40 years of service—a further clasp of gold colour.

In addition, for the completion of each additional 5 years of service (beyond 20 years) a rosette may be awarded to the officer, as follows—

- (a) after 25 years of service—a rosette of bronze colour,
- (b) after 30 years of service—a rosette of silver colour,
- (c) after 35 years of service—a rosette of gold colour,
- (d) after 40 years of service—a further rosette of gold colour.

### **Service Medal**

A Service Medal of bronze with ribbon having equal stripes of dark blue and white (with blue being the outer and central stripes) may be awarded to an officer for 15 years of satisfactory service to Corrective Services NSW.

## **Schedule 6 Savings and transitional provisions**

### **1 General saving**

Any act, matter or thing that, immediately before the repeal of the *Crimes (Administration of Sentences) Regulation 2008*, had effect under that Regulation continues to have effect under this Regulation.

### **2 Approved laboratories**

A laboratory that, immediately before the repeal of the *Crimes (Administration of*



*Sentences) Regulation 2008*, was an approved laboratory within the meaning of clause 265(1) of that Regulation is taken to be an accredited analytical laboratory under this Regulation.

### 3 Government analysts and other analysts

A person who, immediately before the repeal of the *Crimes (Administration of Sentences) Regulation 2008*, was a government analyst under that Regulation or an analyst within the meaning of clause 265(1) of that Regulation is taken to be an analyst under this Regulation.

### 4, 5 (Repealed)

### 6 Transitional arrangements for home detention conditions

- (1) This clause applies to an offender who is subject to a home detention condition imposed under section 170A(3)(a) of the Act.
- (2) The offender has the following obligations—
  - (a) to remain at the offender's place of residence at all times otherwise than—
    - (i) when engaged in activities approved by a community corrections officer, or
    - (ii) when faced with immediate danger (for example, in a fire or medical emergency),
  - (b) to submit a schedule of proposed activities for approval by a community corrections officer,
  - (c) to comply with all reasonable directions of a community corrections officer about authorising contact between the officer and any third party for the purpose of checking compliance with the approved activities,
  - (d) to submit to electronic monitoring,
  - (e) to comply with all reasonable directions of a community corrections officer or electronic monitoring officer in relation to the electronic monitoring of the offender,
  - (f) not to remove or tamper with, damage or disable electronic monitoring equipment,
  - (g) not to possess or have in his or her control any firearm or any prohibited weapon (within the meaning of the *Weapons Prohibition Act 1998*), unless an exemption is granted by a community corrections manager.
- (3) In this clause, **electronic monitoring officer** means any person who is employed for the purpose of monitoring offenders who are subject to electronic monitoring.

(4) This clause ceases to have effect on the commencement of section 124H of the Act.

**7 Conditions of parole for existing serious sex offenders**

- (1) Clause 214A(1A), as inserted by the *Crimes (Administration of Sentences) Amendment (Parole Supervision of Serious Sex Offenders) Regulation 2019*, does not apply to an offender who had been released under a parole order and was subject to a supervision condition (within the meaning of clause 214A) immediately before the commencement of that Regulation.
- (2) However, clause 214A(1A) does apply to the offender if the offender is released under a parole order after the commencement of that Regulation.