Covid-19 Response in Prisons

Description
Crimes (Administration of Sentences) Amendment (COVID-19) Regulation 2020
under the Crimes (Administration of Sentences) Act 1999

EXPLANATORY NOTE: CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (COVID-19) REGULATION 2020

Point of Contact
New South Wales Government, Australia

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Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the Crimes (Administration of Sentences) Act 1999.

Minister for Counter Terrorism and Corrections

Explanatory note

Under section 276 of the Crimes (Administration of Sentences) Act 1999 (the Act) the Commissioner of Corrective Services (the Commissioner) may release an inmate on parole if the inmate belongs to a class specified in this Regulation 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.

The object of this Regulation is to prescribe the following classes of inmates as eligible for release on parole by the Commissioner during the COVID-19 pandemic—

(a) an inmate whose health is at higher risk during the COVID-19 pandemic because of an existing medical condition or vulnerability,

(b) an inmate whose earliest possible release date is within 12 months.

Inmates who are national security interest inmates, male inmates classified as Category AA, A1, A2 or E1 and female inmates classified as Category 5 or 4 or E1 are excluded and cannot be released on parole by the Commissioner.

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.

The Commissioner’s functions in respect of releasing inmates on parole under section 276 of the Act 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).

This Regulation is made under the Crimes (Administration of Sentences) Act 1999, including sections 271 (the general regulation-making power) and 276(1)(a) and (10)(a).
Crimes (Administration of Sentences) Amendment (COVID-19) Regulation 2020

under the

Crimes (Administration of Sentences) Act 1999

1 Name of Regulation

This Regulation is the Crimes (Administration of Sentences) Amendment (COVID-19) Regulation 2020.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.
Schedule 1 Amendment of Crimes (Administration of Sentences) Regulation 2014

Part 23
Insert after Part 22—

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.
EXPLANATORY NOTE

CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (COVID-19) REGULATION 2020

The COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (Amendment Act) was enacted as an emergency measure in response to the COVID-19 pandemic. Schedule 2.5 of the Amendment Act amends the Crimes (Administration of Sentences) Act 1999 (CAS Act) to insert s 276 to give the Commissioner of Corrective Services NSW (Commissioner) the power to release an inmate on parole if:

a) the inmate belongs to a class of inmates prescribed by the regulations; and
b) the Commissioner is satisfied that releasing the inmate on parole 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.

A class of inmates must be prescribed by the regulations to enable the Commissioner to exercise the power.

The Crimes (Administration of Sentences) Amendment (COVID-19) Regulation 2020 (Regulation) inserts a provision into the Crimes (Administration of Sentences) Regulation 2014 prescribing classes of inmates who may be conditionally released by the Commissioner. The Regulation prescribes the following classes of inmates for this purpose:

- 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
- an inmate whose earliest possible release date is within 12 months, other than an excluded inmate

Inmates who are national security interest inmates, male inmates classified as AA, A1, A2 or E1, and female inmates classified as Category 5, Category 4, or E1 are excluded inmates under the regulation.

An inmate must fall into one of these categories to belong to a class that can be considered for conditional release onto parole. These prescribed classes have been chosen based on advice from Corrective Services NSW and the Justice Health and Forensic Mental Health Network.

Belonging to a prescribed class does not necessarily mean an inmate can or will be released. Under s 276(4) of the CAS Act, before making an order for release the Commissioner must consider: the risks to community safety of releasing the inmate; the impact on any registered victims; the protection of the victim and others the inmate may live with in the case of an inmate previously convicted of domestic violence offences; the availability of suitable accommodation; and any other matter the Commissioner considers relevant. The regulation further provides that 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.

Further to this, a wide range of inmates who have committed certain offences or otherwise fall into the categories set out in s 276(3) of the CAS Act cannot be released under s 276 of the CAS Act. There is no limit to the additional factors the Commissioner can consider in making a decision to release an inmate.
The Commissioner’s functions in respect to releasing inmates on parole under section 276 of the CAS Act 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).

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 271 (the general regulation-making power) and 276(1)(a).

The Regulation will commence upon publication on the NSW Legislation website.

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