



New South Wales

Crimes (Administration of Sentences) Amendment (Community-based Orders and Other Matters) Regulation 2018

under the

Crimes (Administration of Sentences) Act 1999

His 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 Corrections

Explanatory note

The object of this Regulation is to amend the *Crimes (Administration of Sentences) Regulation 2014*, in connection with community-based orders (intensive correction orders, community correction orders and conditional release orders) and other matters, as follows:

- (a) **Schedule 1 [1]** amends clause 3 (Interpretation) to omit certain definitions, which are either superseded or dealt with elsewhere in the proposed amendments.
- (b) **Schedule 1 [2]** amends the definition of *work site* in clause 3 to insert a reference to Part 10, in connection with the use of the word “offender” in that Part as proposed to be substituted.
- (c) **Schedule 1 [3]** amends clause 3 to provide that a reference to a community corrections officer includes a reference to a juvenile justice officer where supervision is being undertaken by a juvenile justice officer.
- (d) **Schedule 1 [4]** substitutes Part 10. Proposed Division 1 contains definitions of terms used in the Part. Proposed Division 2 sets out the obligations of an offender under the conditions of a community-based order to which the offender is subject. Proposed Division 3 relates to the suspension of a supervision condition of a community-based order to which an offender is subject.
- (e) **Schedule 1 [4]** also substitutes Part 11. The proposed Part requires a reinstatement report to be prepared for consideration by the State Parole Authority in connection with the assessment of the suitability of home detention for an offender.
- (f) **Schedule 1 [5]** substitutes Part 13. The proposed Part deals with community service work required to be performed under a community service work condition of an intensive correction order or community correction order. It contains clauses as follows:
 - (i) Proposed clause 201 contains definitions.
 - (ii) Proposed clause 202 limits the number of hours worked each day to 8 hours, unless the offender and an officer agree otherwise.
 - (iii) Proposed clause 203 provides that the offender is entitled to tea breaks and meal breaks.
 - (iv) Proposed clause 204 specifies the periods that are to be taken to form part of the time spent by an offender in performing community service work.

- (v) Proposed clause 205 authorises directions to be given to an offender who is reasonably suspected of having recently consumed or to be under the influence of alcohol or drugs to submit to a breath test or to leave the work site.
- (vi) Proposed clause 206 empowers a community corrections officer to exempt, in certain circumstances, an offender from performing something in the course of community service work.
- (vii) Proposed clause 207 authorises the Commissioner of Corrective Services to arrange transport for offenders to and from work sites.
- (viii) Proposed clause 208 requires a community corrections field officer to report to the supervising community corrections officer on matters relating to an offender.
- (g) **Schedule 1 [6], [7], [8], [11], [12] and [13]** delete matter that is superseded.
- (h) **Schedule 1 [9]** substitutes a definition of *offender*. The substituted definition omits an unnecessary reference to a home detainee and a reference to a superseded community service order, and inserts references to a community correction order and conditional release order.
- (i) **Schedule 1 [10]** inserts clauses 328 and 329.
Proposed clause 328 provides for the appointment of community corrections field officers.
Proposed clause 329 prescribes the court procedure for breaches of community correction orders or conditional release orders.

The amendments are made in connection with the commencement of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*.

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 82, 82A, 107B, 107E, 108B, 108E, 164 (5), 165 and 271 (the general regulation-making power).

Crimes (Administration of Sentences) Amendment (Community-based Orders and Other Matters) Regulation 2018

under the

Crimes (Administration of Sentences) Act 1999

1 Name of Regulation

This Regulation is the *Crimes (Administration of Sentences) Amendment (Community-based Orders and Other Matters) Regulation 2018*.

2 Commencement

This Regulation commences on the commencement of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Crimes (Administration of Sentences) Regulation 2014

[1] Clause 3 Interpretation

Omit the definitions of *attendance site*, *home detainee*, *offender* and *supervisor* from clause 3 (1).

[2] Clause 3 (1), definition of “work site”

Insert “10 or” after “Part”.

[3] Clause 3 (3A)

Insert after clause 3 (3):

- (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] Parts 10 and 11

Omit the Parts. Insert instead:

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.

[5] Part 13

Omit the Part. Insert instead:

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.

[6] Clause 223 Circumstances constituting manifest injustice

Omit “or home detention order” from clause 223 (3).

[7] Clauses 233 and 234

Omit the clauses.

[8] Clauses 235 and 237

Omit “, home detention order” wherever occurring.

[9] Clause 243 Declaration about associations with inmates

Omit clause 243 (6). Insert instead:

- (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.

[10] Clauses 328 and 329

Insert after clause 327:

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.

[11] Schedule 4 Forms

Omit Form 1.

[12] Schedule 4, Form 2

Omit "home detention order/" from the heading to the Form.

[13] Schedule 4, Form 2

Omit "*home detention order/".