



New South Wales

# **Crimes (Administration of Sentences) Amendment (Smoke-free Prisons) Regulation 2015**

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*.

DAVID ELLIOTT, MP  
Minister for Corrections

## **Explanatory note**

The objects of this Regulation are:

- (a) to make it an offence to smoke, or use tobacco or e-cigarettes, in correctional centres or residential facilities, and
- (b) to make it an offence to have possession of tobacco, tobacco-related accessories (such as matches, lighters and pipes) e-cigarettes or e-cigarette accessories within correctional centres (if an inmate) or within designated areas of correctional centres (if not an inmate), and
- (c) to make those new offences correctional centre offences.

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, including sections 79, 236M (2) and 271 (the general regulation-making power).

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### **1 Name of Regulation**

This Regulation is the *Crimes (Administration of Sentences) Amendment (Smoke-free Prisons) Regulation 2015*.

### **2 Commencement**

This Regulation commences on 10 August 2015 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 definition of *non-smoking area* from clause 3 (1).

[2] **Clauses 97, 154 and 250**

Omit the clauses.

[3] **Clause 322**

Omit the clause. Insert instead:

**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) The Commissioner may designate an area of a correctional centre (by signs or notices displayed in, or at entrances to, the area) 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.

(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 this clause 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.

(5) For the purposes of section 236M (2) of the Act, subclauses (2) and (3) are prescribed as provisions that do not apply to a residential facility.

(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*.

***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*.

**[4] Schedule 2 Correctional centre offences**

Omit the matter relating to clause 154.

**[5] Schedule 2**

Insert after the matter relating to clause 184:

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