

NORTHERN TERRITORY OF AUSTRALIA

CORRECTIONAL SERVICES (NON-CUSTODIAL ORDERS) REGULATIONS

As in force at 9 September 2014

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 9 September 2014

CORRECTIONAL SERVICES (NON-CUSTODIAL ORDERS) REGULATIONS

Regulations under the *Correctional Services Act*

Part 1 Preliminary matters

1 Citation

These Regulations may be cited as the *Correctional Services (Non-custodial Orders) Regulations*.

2 Commencement

These Regulations commence on the commencement of Part 4 of the *Justice (Corrections) and Other Legislation Amendment Act 2011*.

3 Definitions

In these Regulations:

approved project means a rehabilitation program or work or both approved under section 167 of the Act.

firearm, see section 3(1) of the *Firearms Act*.

home detainee means:

- (a) a non-custodial offender who is subject to a home detention order; or
- (b) a prisoner for whom an administrative home detention permit is in force.

required treatment means:

- (a) assessment and treatment (including counselling):
 - (i) for misuse of alcohol or a drug; or

- (ii) addressing other personal factors that contribute to the offender's criminal behaviour; or
- (b) medical, psychological or psychiatric assessment and treatment; or
- (c) counselling.

restricted drug, for a non-custodial offender, means any of the following:

- (a) a dangerous drug as defined in section 3(1) of the *Misuse of Drugs Act*;
- (b) a Schedule 4, 8 or 9 substance as defined in section 7 of the *Medicines, Poisons and Therapeutic Goods Act*;
- (c) any other drug specified in the offender's non-custodial order as one that he or she is not permitted to use.

supervisor, in relation to a non-custodial offender who is required under a non-custodial work order to be at a place to participate in an approved project, means the person designated by the Commissioner as the supervisor of the place.

training program means:

- (a) a prescribed program (as defined in section 3 of the *Sentencing Act*); or
- (b) any other course, training, education or similar activity.

4 Effect of breach of these Regulations

A failure by a non-custodial offender to comply with these Regulations constitutes a breach of the offender's non-custodial order.

Note for regulation 4

See sections 39(1)(g), 39E(1)(f)(i), 48(1)(g) and 48E(1)(h)(i) of the Sentencing Act and regulation 4A of the Sentencing Regulations.

Part 2 Non-custodial work orders

Division 1 Conduct of non-custodial offender

5 Attendance to participate in approved project

- (1) This regulation applies if a non-custodial offender subject to a non-custodial work order is required to be at a place during a period to participate in an approved project.
- (2) The offender must:
 - (a) be at the place at the start of the required period; and
 - (b) remain at the place for the required period.
- (3) However, if an offender is not at the place as required, he or she does not breach subregulation (2) if:
 - (a) his or her absence is approved by a probation and parole officer; or
 - (b) his or her absence is due to illness and he or she complies with subregulations (5) and (6); or
 - (c) he or she is directed to leave the place under regulation 10(2).
- (4) A probation and parole officer may grant approval under subregulation (3)(a) if satisfied that reasonable grounds exist for the offender's absence.
- (5) If the offender is absent due to illness, the offender must give the probation and parole officer a certificate, signed by a health practitioner, stating:
 - (a) that for the period of the absence the offender was, in the practitioner's opinion, unfit to attend as required; and
 - (b) the grounds for that opinion.
- (6) The certificate must be given to the probation and parole officer not more than 72 hours (or any longer period allowed by the probation and parole officer) after the offender was required to attend at the place.

6 Satisfactory participation

- (1) This regulation applies if a non-custodial offender subject to a non-custodial work order (other than a community work order) is required to participate in an approved project.
- (2) The offender must participate in the project in a manner satisfactory to the supervisor or a probation and parole officer.

Note for regulation 6

For an offender subject to a community work order, an equivalent obligation is imposed by section 37(1)(b) of the Sentencing Act.

7 Alcohol and restricted drugs

- (1) This regulation applies if a non-custodial offender subject to a non-custodial work order is at a place to participate in an approved project.
- (2) The offender must not:
 - (a) be under the influence of alcohol or a restricted drug; or
 - (b) be in possession of alcohol or a restricted drug; or
 - (c) consume alcohol or a restricted drug.
- (3) Subregulation (2) does not apply in relation to a drug taken, or to be taken, as prescribed by a health practitioner.

8 Protective clothing

- (1) This regulation applies if a non-custodial offender subject to a non-custodial work order is required to participate in an approved project that involves the offender performing work.
- (2) While performing the work the offender must, when directed by the supervisor or a probation and parole officer to do so:
 - (a) wear supplied protective clothing; and
 - (b) use supplied protective equipment.
- (3) If the supervisor or a probation and parole officer directs the offender to wear protective footwear while performing the work, the offender must:
 - (a) provide the protective footwear for himself or herself; and
 - (b) wear it while performing the work.

- (4) In this regulation:

supplied means supplied to the offender for the purpose of the offender's participation in the approved project.

9 Conduct while participating in approved project

- (1) This regulation applies if a non-custodial offender subject to a non-custodial work order is at a place to participate in an approved project.
- (2) The offender must not damage, deface or misuse:
- (a) anything at the place; or
 - (b) any equipment, materials or other thing provided to the offender for the purpose of his or her participation in the approved project.
- (3) Subregulation (2) does not apply in relation to normal wear and tear arising from the use of equipment, materials or a thing.

10 Direction to leave if in breach of order

- (1) This regulation applies if:
- (a) a non-custodial offender subject to a non-custodial work order is at a place to participate in an approved project; and
 - (b) the supervisor or a probation and parole officer reasonably believes that the offender:
 - (i) for a community work order – is in breach of the order under section 39(1) of the *Sentencing Act*; or
 - (ii) for a community based order or community custody order – has breached a condition of the order.
- (2) The supervisor or probation and parole officer may direct the offender to leave the place and not return for the remainder of that day.
- (3) The offender must comply with the direction.
- (4) The supervisor or probation and parole officer is not required to arrange for the transport of the offender away from the place.

11 Suspension of obligation to participate in approved project

- (1) This regulation applies if a probation and parole officer is satisfied that:
 - (a) a non-custodial offender subject to:
 - (i) a community work order – is in breach of the order under section 39(1) of the *Sentencing Act*; or
 - (ii) a community based order or community custody order – has breached a condition of the order; and
 - (b) it is inappropriate for the offender to continue participating in the approved project he or she is required under the order to participate in.
- (2) The probation and parole officer may, by notice given to the offender, suspend the offender's obligation under the order to participate in the project.
- (3) The notice may be given verbally or in writing.
- (4) The suspension remains in force until a court deals with the offender under the *Sentencing Act* for the breach of the offender's non-custodial work order.
- (5) However, a suspension does not affect the offender's obligation to complete the requisite number of hours of community work under his or her non-custodial work order.

Division 2 Participation time

12 Failure of supervisor or probation and parole officer to attend

- (1) This regulation applies if:
 - (a) a non-custodial offender subject to a non-custodial work order is required to be at a place at a particular time to participate in an approved project; and
 - (b) the offender is at that place at that time; and
 - (c) neither the supervisor nor a probation and parole officer is present at the place within 1 hour after that time; and
 - (d) the offender satisfies a probation and parole officer that he or she remained at the place for that hour.

- (2) The offender is taken to have:
 - (a) been at the place at the required time; and
 - (b) remained at the place, participating in the approved project, for the number of hours for which the offender was required to participate on that day.
- (3) This regulation does not apply if the supervisor or probation and parole officer had made an arrangement with the offender as to what the offender was to do during the officer's absence.

13 Travelling time

- (1) This regulation applies if:
 - (a) a non-custodial offender subject to a non-custodial work order is required to be at a place a particular time to participate in an approved project; and
 - (b) the offender is at that place at that time; and
 - (c) is taken to, or directed by the supervisor or a probation and parole officer to go to, another place to participate in the approved project.
- (2) The reasonable time spent by the offender in travelling to the other place is taken to be time spent participating in the approved project.

14 Rest and meal breaks

- (1) This regulation applies if a non-custodial offender subject to a non-custodial work order is required to remain at a place participating in an approved project for 8 hours or longer on a particular day.
- (2) The offender must be allowed:
 - (a) a 10 minute rest break in the morning; and
 - (b) a meal break of one hour; and
 - (c) a 10 minute rest break in the afternoon.
- (3) The time allowed for breaks under subregulation (2) is taken to be time spent by the offender participating in the approved project.
- (4) If the offender leaves the place during a rest or meal break, regulation 7 continues to apply to the offender as if he or she were still at the place.

Part 4 Non-custodial offenders other than home detainees

24A Part does not apply to home detainees

This Part does not apply in relation to a home detainee.

25 Requirement to attend for training, treatment etc.

- (1) This regulation applies if a non-custodial offender is required to be at a place at a specified time to:
 - (a) undertake a training program or undergo required treatment; or
 - (b) comply with a reporting or supervision requirement under the order.
- (2) The offender must be at the required place at the required time.
- (3) However, if the offender is not at the place as required, he or she does not breach subregulation (2) if:
 - (a) his or her failure to attend is approved by a probation and parole officer; or
 - (b) his or her failure to attend is due to illness and he or she complies with subregulations (5) and (6).
- (4) A probation and parole officer may grant approval under subregulation (3)(a) if satisfied that reasonable grounds exist for the offender not attending.
- (5) If the offender is absent due to illness the offender must give a probation and parole officer a certificate, signed by a health practitioner, stating:
 - (a) that at the time of the failure to attend the offender was, in the practitioner's opinion, unfit to attend as required; and
 - (b) the grounds for that opinion.
- (6) The certificate must be given to the probation and parole officer not more than 72 hours (or any longer period allowed by the officer) after the offender's failure to attend at the place.

26 Alcohol and restricted drugs

- (1) A non-custodial offender who is at a place for a purpose mentioned in regulation 25(1) must not:
 - (a) be under the influence of alcohol or a restricted drug; or
 - (b) be in possession of alcohol or a restricted drug; or
 - (c) consume alcohol or a restricted drug.
- (2) Subregulation (1) does not apply in relation to a drug taken, or to be taken, as prescribed by a health practitioner.

27 Participation in satisfactory manner

- (1) A non-custodial offender who is required to undertake a training program or undergo required treatment must participate in the program or treatment in a manner satisfactory to the person conducting the program or treatment.
- (2) A non-custodial offender who is required to report or be supervised must do so in a manner satisfactory to a probation and parole officer.

28 Requirement to remain at approved residence

- (1) This regulation applies if a non-custodial offender who is subject to a monitoring order is required by the order, or by a direction given by a probation and parole officer, to remain at his or her approved residence during a specified period.
- (2) During the specified period the offender must remain at his or her approved residence unless:
 - (a) the offender's absence is for the purpose of seeking urgent treatment from a health practitioner; and
 - (b) the offender gives a probation and parole officer a certificate, signed by a health practitioner, stating the grounds on which the treatment was sought; and
 - (c) the certificate is given to the probation and parole officer not more than 72 hours (or any longer period allowed by the officer) after the offender left his or her approved residence.

- (3) If the offender is absent from his or her approved residence for the purpose mentioned in subregulation (2)(a), he or she must:
 - (a) travel without delay and by the shortest practicable route from the approved residence to the place where he or she seeks treatment; and
 - (b) return to the approved residence by the shortest practicable route as soon as practicable after being treated.

29 Firearms

A non-custodial offender (other than an offender who is subject only to a community work order):

- (a) must not possess a firearm without the approval of the Commissioner; and
- (b) must immediately notify a probation and parole officer if another person at the offender's residence is in possession of a firearm.

30 Conduct generally

A non-custodial offender:

- (a) must accept telephone calls from a probation and parole officer at the offender's home or place of employment or business; and
- (b) must not obstruct a probation and parole officer in the exercise of the officer's functions, or anyone assisting the probation and parole officer; and
- (c) must not assault, threaten, insult or use abusive language to a correctional services officer.

Part 5 Home detainees

31 Requirement to reside in and remain at approved residence

- (1) A home detainee who is absent from his or her approved residence does not breach his or her home detention order or administrative home detention permit if any of the following apply:
 - (a) the detainee's absence is necessary in order to comply with a direction of a probation and parole officer;

- (b) the detainee's absence is for one of the following purposes and has been approved by a probation and parole officer:
 - (i) engaging in employment or carrying on a business;
 - (ii) engaging in education or training;
 - (iii) participating in rehabilitation;
 - (iv) engaging in practices associated with the detainee's religion or belief system;
 - (c) the detainee's absence is for the purpose of seeking urgent treatment from a health practitioner and the detainee complies with subregulations (2) and (3).
- (2) If the detainee is absent for the purpose of seeking urgent treatment, the detainee must give a probation and parole officer a certificate, signed by a health practitioner, stating the grounds on which the treatment was sought.
 - (3) The certificate must be given to the probation and parole officer not more than 72 hours (or any longer period allowed by the officer) after the detainee left his or her approved residence.
 - (4) If the detainee is absent from his or her approved residence for a purpose mentioned in subregulation (1) he or she must:
 - (a) travel without delay and by the shortest practicable route from the approved residence to the place where that purpose is to be carried out; and
 - (b) return to the approved residence by the shortest practicable route as soon as practicable after the purpose has been completed.

32 Alcohol and restricted drugs

A home detainee must not consume or purchase alcohol or a drug (other than as prescribed by a health practitioner).

33 Firearms

A home detainee:

- (a) must not possess a firearm without the approval of the Commissioner; and

- (b) must immediately notify a probation and parole officer if another person at the detainee's approved residence is in possession of a firearm.

34 Conduct generally

A home detainee:

- (a) must be of good behaviour; and
- (b) must not contravene a law in force in the Territory; and
- (e) must accept visits from a probation and parole officer at a place where the detainee is permitted to be under regulation 31; and
- (f) must accept telephone calls from a probation and parole officer at the detainee's approved residence or place of employment or business.

Part 7 Repeals and transitional matters

37 Repeals

The Regulations specified in the Schedule are repealed.

38 Continuation of directions, approvals etc.

Any direction, requirement, approval, exemption or suspension in force in relation to an offender under regulations repealed by regulation 37 immediately before the commencement of that regulation, continues in force in relation to the offender for the purposes of these Regulations.

Schedule	Repealed Regulations
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regulation 37

<i>Prisons (Correctional Services) (Community Service Orders) Regulations</i>

Subordinate Legislation No. 33 of 1996

<i>Prisons (Correctional Services) (Home Detention Orders) Regulations</i>
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Subordinate Legislation No. 32 of 1996

ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Prisons (Correctional Services) (Community Orders) Regulations (SL No. 53, 2011)

Notified	20 December 2011
Commenced	27 February 2012 (r 2, s 2 <i>Justice (Corrections) and Other Legislation Amendment Act 2011</i> (Act No. 24, 2011) and <i>Gaz S9</i> , 21 February 2012)

Prisons (Correctional Services) (Community Orders) Amendment Regulations 2014 (SL No. 29, 2014)

Notified	9 September 2014
Commenced	9 September 2014

3 LIST OF AMENDMENTS

r 1	amd No. 29, 2014, r 3
r 3	sub No. 29, 2014, r 4
r 4	amd No. 29, 2014, r 8
pt 2 hdg	amd No. 29, 2014, r 8
pt 2	
div 1 hdg	amd No. 29, 2014, r 8
rr 5 – 11	amd No. 29, 2014, r 8
pt 2	
div 1 hdg	amd No. 29, 2014, r 8
rr 12 – 14	amd No. 29, 2014, r 8
pt 2	
div 3 hdg	rep No. 29, 2014, r 5
rr 15 – 16	rep No. 29, 2014, r 5
pt 3 hdg	rep No. 29, 2014, r 5
rr 17 – 24	rep No. 29, 2014, r 5
pt 4 hdg	amd No. 29, 2014, r 8
r 24A	ins No. 29, 2014, r 6
rr 25 – 30	amd No. 29, 2014, r 8
pt 5 hdg	amd No. 29, 2014, r 8
rr 31 – 34	amd No. 29, 2014, r 8

ENDNOTES

r 35	rep No. 29, 2014, r 7
pt 6 hdg	rep No. 29, 2014, r 7
r 36	rep No. 29, 2014, r 7
pt 8 hdg	exp No. 53, 2011, r 47
rr 39 – 47	exp No. 53, 2011, r 47