

NORTHERN TERRITORY OF AUSTRALIA
PRISONS (CORRECTIONAL SERVICES)
AMENDMENT ACT 1994

No. 21 of 1994

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NORTHERN TERRITORY OF AUSTRALIA

No. 21 of 1994

AN ACT

to amend the *Prisons (Correctional Services) Act*

[Assented to 18 April 1994]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Prisons (Correctional Services) Amendment Act 1994*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Prisons (Correctional Services) Act* is in this Act referred to as the Principal Act.

4. DEFINITIONS

Section 5 of the Principal Act is amended by omitting the definition of "prison offence" and substituting the following:

"'prison misconduct' means an act or omission prescribed by the Regulations to be prison misconduct;".

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5. DELEGATION

Section 7 of the Principal Act is amended -

(a) by inserting after subsection (1) the following:

"(1A) The officer in charge of a prison may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers and functions under Part VIII."; and

(b) by inserting in subsection (2) after "by the Director" the words "or the officer in charge of a prison".

6. APPOINTMENT OF VISITING MEDICAL OFFICERS

Section 27 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) An appointment under subsection (1) may be made personally or by reference to a medical practitioner from time to time holding or acting in a particular office.".

7. REPEAL AND SUBSTITUTION

Part VIII of the Principal Act is repealed and the following substituted:

"PART VIII - PRISON MISCONDUCT

"30. PRISON MISCONDUCT

"The Regulations may, for the purposes of this Part, prescribe an act or omission of a prisoner, while in lawful custody, to be prison misconduct.

"31. BRINGING CHARGE OF PRISON MISCONDUCT

"(1) A charge of prison misconduct may be brought against a prisoner by an officer.

"(2) As soon as practicable after an officer brings a charge of prison misconduct against a prisoner under subsection (1), the officer shall notify the officer in charge of the prison where the prisoner is in custody of the charge having been brought.

"(3) The officer in charge of a prison, on being notified under subsection (2), shall -

(a) direct that the charge be withdrawn;

(b) direct that a hearing of the charge be conducted under this Part;

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(c) direct that -

- (i) the charge be withdrawn and a different charge be brought against the prisoner; or
- (ii) a further charge be brought against the prisoner,

and that a hearing of the charge or charges be conducted under this Part; or

(d) refer the matter to the Commissioner of Police for investigation.

"32. HEARING CHARGE OF PRISON MISCONDUCT

"(1) A charge of prison misconduct brought under this Part shall be heard and determined by the officer in charge of the prison in which the misconduct occurred, and subject to this section, shall be heard and determined in accordance with the Regulations.

"(2) A charge of prison misconduct shall not be heard or determined by the officer who brought the charge.

"(3) The officer in charge of a prison in conducting a hearing under this Part is not bound by the rules of evidence but may inform himself on any matter in such manner as he thinks fit.

"(4) A charge of prison misconduct shall be heard and determined in the presence of the prisoner charged at the prison where it is alleged that the misconduct occurred or some other place as determined by the officer in charge of the prison.

"(5) Where, at a hearing under this Part, the officer in charge of a prison is satisfied, after making appropriate enquiries, that a prisoner charged with prison misconduct does not, for any reason, fully understand the nature or circumstances of the alleged misconduct or the nature of the proceedings, the officer may appoint a person nominated or agreed to by the prisoner, or, in the absence of such nomination or agreement, some other person, to assist the prisoner and to represent the prisoner at the hearing.

"(6) A prisoner charged with prison misconduct shall, at the hearing of the charge under this Part, be permitted to use an interpreter if the prisoner requests the assistance of an interpreter.

"(7) A prisoner charged with prison misconduct shall not, at the hearing of the charge under this Part, be represented by a legal practitioner.

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"(8) Where more than one charge of prison misconduct is brought against a prisoner arising out of the same set of circumstances, the officer in charge of the prison may hear and determine the charges jointly and may impose one or more penalties under section 33 in respect of the charges that are proved.

"(9) A prisoner charged with prison misconduct at the hearing of the charge under this Part may give evidence, cross-examine and call witnesses.

"33. PENALTIES FOR PRISON MISCONDUCT

"Where a prisoner charged with prison misconduct admits the charge, or the charge is proved beyond reasonable doubt, the officer in charge of the prison may impose one or more of the following penalties:

- (a) order that the prisoner be kept in separate confinement for such period, not exceeding 7 days, as the officer thinks fit;
- (b) order that the prisoner not be entitled to prescribed privileges for such period, not exceeding 28 days, as the officer thinks fit;
- (c) reprimand or caution the prisoner.

"34. APPEALS

"(1) A prisoner aggrieved by a penalty imposed on him under this Part may appeal to the Director against the imposition of the penalty.

"(2) An appeal under this section shall be commenced, heard and determined in accordance with the Regulations.

"(3) Where an appeal is commenced under this section, the penalty appealed against shall be suspended pending the determination of the appeal.

"(4) On determining an appeal under this section, the Director may -

- (a) affirm the penalty imposed by the officer in charge of the prison;
- (b) subject to this Part, increase, decrease or vary the penalty imposed;
- (c) substitute any other penalty that could have been imposed; or
- (d) revoke the order imposing the penalty.

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"(5) An appeal does not lie against an order of the Director made under subsection (4).".
