

NORTHERN TERRITORY OF AUSTRALIA

CORRECTIONAL SERVICES AMENDMENT REGULATIONS 2016

Subordinate Legislation No. 9 of 2016

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 9 of 2016*

Correctional Services Amendment Regulations 2016

I, John Laurence Hardy, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Correctional Services Act*.

Dated 18 April 2016

J. L. HARDY
Administrator

By His Honour's Command

P. G. CHANDLER
Minister for Education
acting for
Minister for Correctional Services

* Notified in the *Northern Territory Government Gazette* on 3 May 2016.

Part 1 Preliminary matters**1 Citation**

These Regulations may be cited as the *Correctional Services Amendment Regulations 2016*.

Part 2 Amendment of Correctional Services Regulations**2 Regulations amended**

These Regulations amend the *Correctional Services Regulations*.

3 Regulation 2 amended

Regulation 2

insert (in alphabetical order)

approved project, for Part 3A, see regulation 19A.

firearm, for Part 3A, see regulation 19A.

home detainee, for Part 3A, see regulation 19A.

required treatment, for Part 3A, see regulation 19A.

restricted drug 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 the offender is not permitted to use.

supervisor, for Part 3A, see regulation 19A.

training program, for Part 3A, see regulation 19A.

4 Regulation 15 amended

- (1) Regulation 15(a), after ", alcohol"

insert

in the offender's body

- (2) Regulation 15(b)

omit

(as defined in regulation 3 of the *Correctional Services (Non-Custodial Orders) Regulations*)

insert

in the offender's body

5 Regulation 16 amended

Regulation 16(b)

omit

for a non-custodial offender –

6 Part 3A inserted

After regulation 19

insert

Part 3A Non-custodial orders**Division 1 Preliminary matters****19A Definitions**

In this Part:

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.

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.

19B Effect of breach of this Part

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

Note for regulation 19B

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.

Division 2 Non-custodial work orders

Subdivision 1 Conduct of non-custodial offender

19C 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 required place at the start of the required period; and
 - (b) remain at the required place for the required period.
- (3) However, if an offender is not at the place as required, the offender does not breach subregulation (2) if:
 - (a) the offender's absence is approved by a probation and parole officer; or
 - (b) the offender's absence is due to illness and the offender complies with subregulations (5) and (6); or
 - (c) the offender is directed to leave the place under regulation 19H(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 and dated by a health practitioner, stating:
 - (a) the period for which the offender was, or is, 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 was required to attend at the place.

19D 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 19D

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

19E 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 use 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.

19F 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) If the offender is given a direction mentioned in subregulation (2) or (3), the offender must, when wearing the supplied protective clothing, using the supplied protective equipment or wearing the protective footwear, comply with any directions of the supervisor or probation and parole officer in relation to that clothing, equipment or footwear.
- (5) In this regulation:

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

19G 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 the offender's 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.

19H 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.

19J 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 that the offender 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 required number of hours of community work under the offender's non-custodial work order.

Subdivision 2 Participation time

19K 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 the offender 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 supervisor or officer's absence.

19L 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 at a particular time to participate in an approved project; and
 - (b) the offender is at that place at that time; and
 - (c) the offender 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.

19M 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 1 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 19E continues to apply to the offender as if the offender were still at the place.

Division 3 Non-custodial offenders other than home detainees

19N Division does not apply to home detainees

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

19P 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 particular 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, the offender does not breach subregulation (2) if:
 - (a) the offender's failure to attend is approved by a probation and parole officer; or
 - (b) the offender's failure to attend is due to illness and the offender 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.

19Q Alcohol and restricted drugs

- (1) A non-custodial offender who is at a place for a purpose mentioned in regulation 19P(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 use 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.

19R 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.

19S 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 the offender's approved residence during a specified period.
- (2) During the specified period the offender must remain at the offender's 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 the offender's approved residence.
- (3) If the offender is absent from the offender's approved residence for the purpose mentioned in subregulation (2)(a), the offender must:
- (a) travel without delay and by the shortest practicable route from the approved residence to the place where the offender seeks treatment; and
 - (b) return to the approved residence by the shortest practicable route as soon as practicable after being treated.

19T 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.

19U 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 officer; and
- (c) must not assault, threaten, insult or use abusive language to a correctional services officer.

Division 4 Home detainees**19V Requirement to reside in and remain at approved residence**

- (1) A home detainee who is absent from the detainee's approved residence does not breach the detainee's 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 and has been approved by a probation and parole officer:
 - (i) employment or carrying on a business;
 - (ii) education or training;
 - (iii) rehabilitation;
 - (iv) 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 the detainee's approved residence.
- (4) If the detainee is absent from the detainee's approved residence for a purpose mentioned in subregulation (1) the detainee 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.

19W Alcohol and restricted drugs

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

19X 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.

19Y Conduct generally

A home detainee:

- (a) must be of good behaviour; and
- (b) must not contravene a law in force in the Territory; and

- (c) must accept visits from a probation and parole officer at a place where the detainee is permitted to be under regulation 19V; and
- (d) must accept telephone calls from a probation and parole officer at the detainee's approved residence or place of employment or business; and
- (e) must not assault, threaten, insult or use abusive language to a correctional services officer.

7 Regulation 20 amended

Regulation 20

omit

consume or purchase alcohol or a drug

insert

purchase or consume alcohol, or purchase or use any drug

8 Regulation 27 amended

Regulation 27(1)(b)

omit

right breast of his or her uniform or clothing

insert

recipient's uniform or clothing, in the manner specified in the Commissioner's Directions,

9 Part 7 inserted

After regulation 31

insert

Part 7 Transitional matters for Correctional Services Amendment Regulations 2016

32 Continuation of directions, approvals etc.

- (1) Any direction, requirement, approval, exemption or suspension in force immediately before the commencement in relation to an offender under the repealed Regulations continues in force in

relation to the offender for the purposes of Part 3A, as inserted by the amending Regulations.

(2) In this regulation:

amending Regulations means the *Correctional Services Amendment Regulations 2016*.

commencement means the commencement of the amending Regulations.

repealed Regulations means the *Correctional Services (Non-custodial Orders) Regulations*, as in force immediately before the commencement.

10 Schedule 1 amended

Schedule 1, item 12, after "Consuming,"

insert

using,

Part 3 Repeals

11 Regulations repealed

The Regulations specified in the Schedule are repealed.

Part 4 Expiry of Regulations

12 Expiry of Regulations

These Regulations expire on the day after they commence.

Schedule Repealed Regulations

regulation 11

Prisons (Correctional Services) (Community Orders) Regulations

Subordinate Legislation
No. 53 of 2011

Prisons (Correctional Services) (Community Orders) Amendment Regulations 2014

Subordinate Legislation
No. 29 of 2014
