

NORTHERN TERRITORY OF AUSTRALIA

PRISONS (CORRECTIONAL SERVICES) (COMMUNITY ORDERS)
REGULATIONS

Subordinate Legislation No. 53 of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 53 of 2011*

Prisons (Correctional Services) (Community Orders) Regulations

I, Sally Gordon Thomas, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the following Acts:

Liquor Act;

Prisons (Correctional Services) Act;

Sentencing Act;

Surveillance Devices Act.

Dated 19 December 2011

S. G. THOMAS
Administrator

By Her Honour's Command

K. VATSKALIS
Minister for Health
acting for
Minister for Correctional Services

* Notified in the *Northern Territory Government Gazette* on 20 December 2011.

Part 1 Preliminary matters

1 Citation

These Regulations may be cited as the *Prisons (Correctional Services) (Community 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, see section 3(1) of the *Sentencing Act*.

breath analysis, see section 94C(9) of the Act.

breath test, see section 94C(9) of the Act.

blood test, see section 94C(9) of the Act.

community order means any of the following:

- (a) a community work order;
- (b) a community based order;
- (c) a community custody order;
- (d) a home detention order.

community work obligation means:

- (a) a community work order; or
- (b) a condition imposed on a community based order under section 39G(1) of the *Sentencing Act*; or
- (c) a condition of a community custody order under section 48E(1)(b) of the *Sentencing Act*.

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

health practitioner means any of the following:

- (a) a medical practitioner;
- (b) a registered nurse;
- (c) a person registered under the Health Practitioner Regulation National Law:
 - (i) to practise in the dental profession as a dentist (other than as a student); and
 - (ii) in the dentists division of that profession;
- (d) a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student);
- (e) a person who has a right of practice under the *Health Practitioners Act* in the category of health care practice of Aboriginal health work.

monitoring test, see section 94C(9) of the Act.

offender means an offender, as defined in section 3(1) of the *Sentencing Act*, who is subject to a community order.

pathologist means a medical practitioner who holds a specialist registration under the Health Practitioner Regulation National Law in the recognised speciality of pathology.

registered nurse means a person registered under the Health Practitioner Regulation National Law:

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession.

required treatment means:

- (a) assessment or treatment as mentioned in section 39F(1)(b) of the *Sentencing Act*; or
- (b) counselling or treatment as mentioned in section 48E(2)(b) of the *Sentencing Act*.

residential condition means:

- (a) a condition imposed on a community based order under section 39F(2)(a) of the *Sentencing Act*; or
- (b) a requirement imposed on an offender subject to a community based order under section 39E(2)(a) of the *Sentencing Act*; or
- (c) a condition imposed on a community custody order under section 48F(2)(a) of the *Sentencing Act*; or
- (d) a requirement imposed on an offender subject to a community custody order under section 48E(6)(a) of the *Sentencing Act*.

restricted drug, for an 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 substance or Schedule 8 substance within the meaning of the *Poisons and Dangerous Drugs Act*;
- (c) any other drug specified in the offender's community order as one that he or she is not permitted to use.

specified residence means:

- (a) for an offender subject to a home detention order – the premises or place specified in the order as the place at which he or she must reside; or
- (b) for an offender subject to a residential condition – the place at which the offender must reside as specified in:
 - (i) the offender's community based order or community custody order; or
 - (ii) a notice under section 39E(2) or 48E(6) of the *Sentencing Act*.

4 Effect of breach of these Regulations

A failure by an offender to comply with these Regulations constitutes a breach of the offender's community 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 Community work obligations

Division 1 Conduct of offender

5 Attendance to participate in approved project

- (1) This regulation applies if an offender subject to a community work obligation 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 surveillance officer or supervising 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 surveillance officer or supervising 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 Director 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 Director not more than 72 hours (or any longer period allowed by the Director) after the offender was required to attend at the place.

6 Satisfactory participation

- (1) This regulation applies if an offender subject to a community work obligation under a community based order or a community custody order is required to participate in an approved project.

- (2) The offender must participate in the project in a manner satisfactory to a probation officer or supervising 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 an offender subject to a community work obligation 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 an offender subject to a community work obligation 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 a probation officer or supervising officer to do so:
- (a) wear supplied protective clothing; and
 - (b) use supplied protective equipment.
- (3) If a probation officer or supervising 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 project

- (1) This regulation applies if an offender subject to a community work obligation 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 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) an offender subject to a community work obligation is at a place to participate in an approved project; and
 - (b) a probation officer or supervising officer is of the opinion that the offender:
 - (i) for a community work order – is in breach of the offender's community 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 probation officer or supervising 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 probation officer or supervising officer is not required to arrange for the transport of the offender away from the place.

11 Director may suspend obligation to participate in project

- (1) This regulation applies if the Director is satisfied that:
 - (a) an offender subject to a community work obligation:
 - (i) for a community work order – is in breach of the offender's community 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; 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 Director 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 community 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 community work obligation.

Division 2 Participation time

12 Failure of probation officer or supervising officer to attend

- (1) This regulation applies if:
 - (a) an offender subject to a community work obligation 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) a probation officer or supervising officer is not present at the place within 1 hour after that time; and
 - (d) the offender satisfies the Director, a probation officer or supervising 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 8 hours.
- (3) This regulation does not apply if the probation officer or supervising 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) an offender subject to a community work obligation 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 a probation officer or supervising 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 an offender subject to a community work obligation 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.

Division 3 Powers and functions of supervising officer

15 Powers and functions of supervising officer

- (1) A supervising officer must supervise offenders subject to community work obligations as required by the Director.
- (2) A supervising officer must:
 - (a) report to, or give information to, the Director on matters relating to the supervision of offenders as required by the Director; and

- (b) attend at a court when required by the Director to give evidence in proceedings against an offender for a breach of a community order.

16 Conflict of interests

- (1) A supervising officer has an **interest** in an approved project if the officer will or may benefit, directly or indirectly, from any work performed under the project.
- (2) A supervising officer who has an interest in an approved project must notify the Director of that interest as soon as practicable after becoming aware of it.
- (3) A supervising officer supervising an offender who is participating in an approved project must not accept any gift or reward from anyone participating in or involved with the project unless approved by the Director.
- (4) In this regulation:
benefit does not include a benefit that will or may accrue to the public generally or to a sector of the public.

Part 3 Monitoring tests

17 When monitoring test may be carried out

A surveillance officer must not require an offender to submit to a monitoring test under section 94C(1)(e) of the Act unless:

- (a) the offender is subject to a community based order on which a condition has been imposed under section 39F(1)(c) of the *Sentencing Act*; or
- (b) the offender is subject to a community custody order on which a condition has been imposed under section 48F(1)(b) of the *Sentencing Act*; or
- (c) the offender is subject to a home detention order.

18 Types of monitoring tests

- (1) A monitoring test may be carried out on an offender only for a purpose mentioned in this regulation.
- (2) A breath test or breath analysis may be carried out to ascertain whether alcohol is present in the offender's breath.

- (3) A blood test may be carried out to ascertain any of the following:
 - (a) whether there is alcohol or a restricted drug in the offender's blood;
 - (b) the concentration of alcohol or a restricted drug in the offender's blood.
- (4) A saliva test may be carried out to ascertain whether a restricted drug is present in the offender's saliva.
- (5) A urine test may be carried out to ascertain any of the following:
 - (a) whether a restricted drug is present in the offender's urine;
 - (b) the concentration of a restricted drug in the offender's urine.

19 Requirement to provide sample

An offender who is required to submit to a breath or urine test:

- (a) must provide a sufficient quantity of breath or urine to enable testing to be carried out; and
- (b) must not tamper with the sample in any way.

20 Carrying out breath analysis

A police officer must not carry out a breath analysis under section 94C(4)(b) of the Act unless the officer:

- (a) is an authorised operator under regulation 59 of the *Traffic Regulations*; and
- (b) uses a prescribed breath analysis instrument, as defined in section 3(1) of the *Traffic Act*; and
- (c) carries out the test in accordance with regulations 57 and 58 of the *Traffic Regulations*.

Note for regulation 18(b)

Breath analysis instruments are prescribed by regulation 56 of the Traffic Regulations.

21 Carrying out blood tests

- (1) A sample of blood may be taken from an offender only by:
 - (a) a medical practitioner; or
 - (b) a registered nurse; or

- (c) a qualified person, as defined in section 3(1) of the *Traffic Act*.
- (2) A person mentioned in subregulation (1) may take a sample of blood whether or not the offender consents to the sample being taken.
- (3) A sample of blood taken as part of carrying out a monitoring test is the property of the Territory.

22 Analysis of samples

Analysis of a sample of blood, urine or saliva taken as part of conducting a monitoring test must be carried out by a pathologist.

23 Directions relating to monitoring test

An offender who is required by a surveillance officer to submit to a monitoring test must comply with the reasonable directions of any of the following in relation to the carrying out of the test:

- (a) a surveillance officer;
- (b) a health practitioner;
- (c) for a test to be carried out under section 94C(4)(b) or (c) of the Act – a police officer.

24 Persons authorised to sign certificates

For the definition ***prescribed person*** in section 94C(9) of the Act, the following persons are prescribed:

- (a) a police officer who is an authorised operator as mentioned in regulation 20(a);
- (b) a medical practitioner;
- (c) a registered nurse;
- (d) a qualified person as mentioned in regulation 21(1)(c);
- (e) a pathologist.

Part 4 Community based orders and community custody orders

25 Requirement to attend for program, treatment etc.

- (1) This regulation applies if an offender is required to be at a place at a specified time to:
 - (a) undertake a prescribed program or undergoing 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 surveillance 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 surveillance 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 the Director 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 is given to the Director not more than 72 hours (or any longer period allowed by the Director) after the offender's failure to attend at the place.

26 Alcohol and restricted drugs

- (1) An 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) An offender who is required to undertake a prescribed 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) An offender who is required report or be supervised must do in a manner satisfactory to a surveillance officer.

28 Requirement to remain at specified residence

- (1) This regulation applies if an offender:
- (a) is subject to a residential condition; and
 - (b) is required under his or her community order to remain at his or her specified residence during a specified period.
- (2) During the specified period the offender must remain at his or her specified residence unless:
- (a) the offender's absence is for the purpose of seeking urgent treatment from a health practitioner; and
 - (b) the offender gives the Director a certificate, signed by a health practitioner, stating the grounds on which the treatment was sought; and
 - (c) the certificate is given to the Director not more than 72 hours (or any longer period allowed by the Director) after the offender left his or her specified residence.
- (3) If the offender is absent from his or her specified 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 specified residence to the place where he or she seeks treatment; and
 - (b) return to the specified residence by the shortest practicable route as soon as practicable after being treated.

29 Firearms

An offender subject to a community based order or community custody order:

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

30 Conduct generally

An offender subject to a community based order or community custody order:

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

Part 5 Home detention orders**31 Requirement to reside in and remain at specified residence**

- (1) An offender subject to a home detention order who is absent from his or her specified residence does not breach the order under section 48(1)(a) of the *Sentencing Act* if any of the following apply:
 - (a) the offender's absence is necessary in order to comply with a direction of a surveillance officer that the offender is required to comply with;
 - (b) the offender's absence is for one of the following purposes and has been approved by the Director:
 - (i) engaging in employment or carrying on a business;
 - (ii) engaging in education or training;
 - (iii) participating in rehabilitation;
 - (iv) engaging in religious worship;

- (c) the offender's absence is for the purpose of seeking urgent treatment from a health practitioner and the offender complies with subregulations (2) and (3).
- (2) If the offender is absent for the purpose of seeking urgent treatment, the offender must give the Director a certificate, signed by a health practitioner, stating the grounds on which the treatment was sought.
- (3) The certificate must be given to the Director not more than 72 hours (or any longer period allowed by the Director) after the offender left his or her specified residence.
- (4) If the offender is absent from his or her specified residence for a purpose mentioned in subregulation (1) he or she must:
 - (a) travel without delay and by the shortest practicable route from the specified residence to the place where that purpose is to be carried out; and
 - (b) return to the specified residence by the shortest practicable route as soon as practicable after the purpose has been completed.

32 Alcohol and restricted drugs

An offender subject to a home detention order must not consume or purchase alcohol or a drug (other than as prescribed by a health practitioner).

33 Firearms

An offender subject to a home detention order:

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

34 Conduct generally

An offender subject to a home detention order:

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

- (c) must comply with the reasonable directions of a surveillance officer; and
- (d) must not obstruct a surveillance officer in the exercise of the officer's functions, or anyone assisting the surveillance officer; and
- (e) must accept visits from a surveillance officer at a place where the offender is permitted to be under regulation 31; and
- (f) must accept telephone calls from a surveillance officer at the offender's specified residence or place of employment or business; and
- (g) must:
 - (i) give a sample of the offender's voice for use with an approved voice recognition system while the order is in force; and
 - (ii) comply with the reasonable directions of a surveillance officer in the use of the system for the effective monitoring of the offender's activities.

35 Directions by surveillance officers

- (1) A surveillance officer may give an offender subject to a home detention order any of the following directions:
 - (a) to attend counselling or a course at a specified time and place;
 - (b) not to associate with a specified person.
- (2) This regulation does not limit the directions that may be given by a surveillance officer.

Part 6 General matters

36 Approval of rehabilitation program as approved project

For section 94E(3) of the Act, a community work advisory committee may approve a rehabilitation program for the purposes of the definition **approved project** in section 3(1) of the *Sentencing Act*.

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.

Part 8 Amendment of other regulations

Division 1 Liquor Regulations

39 Regulations amended

This Division amends the *Liquor Regulations*.

40 Regulation 5B amended

Regulation 5B(a)

omit

40, 44

insert

39F(1)(c), 40, 44, 48F(1)(b)

Division 2 Sentencing Regulations

41 Regulations amended

This Division amends the *Sentencing Regulations*.

42 Regulation 2 replaced

Regulation 2

repeal, insert

2 Prescribed program and undertaking

- (1) For the definition ***prescribed program*** in section 3(1) of the Act, each of the following is a prescribed program for a community based order or community custody order:
- (a) an alcohol or other drug treatment program;
 - (b) an education or training program in driving;
 - (c) any other education or training program;
 - (d) treatment or counselling addressing personal factors.
- (2) For the definition ***undertaking*** in section 3(1) of the Act, the prescribed form is Form 1 in the Schedule.

43 Regulation 4A inserted

After regulation 4

insert

4A Requirement to comply with *Prisons (Correctional Services) (Community Orders) Regulations*

For sections 39(1)(g), 39E(1)(f)(i), 48E(1)(h)(i) and 48(1)(g) of the Act, an offender subject to a community work order, community based order, community custody order or home detention order must comply with the *Prisons (Correctional Services) (Community Orders) Regulations*.

44 Regulations 10 and 11A repealed

Regulations 10 and 11A

repeal

Division 3 Surveillance Devices Regulations

45 Regulations amended

This Division amends the *Surveillance Devices Regulations*.

46 Regulation 3 amended

- (1) Regulation 3, before "For"

insert

- (1)

(2) Regulation 3(1)(d)

omit, insert

- (d) in accordance with the directions of the Director of Correctional Services to monitor the activities and location of a monitored offender to the extent that the offender is required by the monitoring requirement to submit to the monitoring;

(3) After regulation 3(1)

insert

(2) In this regulation:

monitored offender means a person subject to a monitoring requirement.

monitoring requirement means any of the following:

- (a) a home detention order, community custody order or community based order under the *Sentencing Act*;
- (b) an alternative detention order under the *Youth Justice Act* that is subject to a condition mentioned in section 102(1)(b) of that Act;
- (c) a conduct agreement under the *Bail Act* that is subject to a condition mentioned in section 27A(1)(ia) or (ib) of that Act;
- (d) a parole order under the *Parole of Prisoners Act* that is subject to a condition mentioned in section 5(5C)(a) or (b) of that Act.

Division 4 Expiry of Part

47 Expiry of Part

This Part expires on the day after commencement.

Schedule Repealed Regulations

regulation 37

Prisons (Correctional Services) (Community Service Orders) Regulations

Subordinate Legislation
No. 33 of 1996

Prisons (Correctional Services) (Home Detention Orders) Regulations

Subordinate Legislation
No. 32 of 1996
