

NORTHERN TERRITORY OF AUSTRALIA
CORRECTIONAL SERVICES REGULATIONS

Subordinate Legislation No. 28 of 2014

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Schedule 1 Misconduct

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 28 of 2014*

Correctional Services 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 *Correctional Services Act*.

Dated 9 September 2014

S. G. THOMAS
Administrator

By Her Honour's Command

J. W. ELFERINK
Minister for Correctional Services

* Notified in the *Northern Territory Government Gazette* on 9 September 2014.

Part 1 Preliminary matters

1 Citation

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

2 Definitions

In these Regulations:

blood analysis, for Part 3, see regulation 10(e).

breath analysis, for Part 3, see regulation 10(d).

breath test, for Part 3, see regulation 10(a).

pathologist, for Part 3, see regulation 9.

phlebotomist, for Part 3, see regulation 9.

prescribed breath analysis instrument, for Part 3, see regulation 9.

saliva test, for Part 3, see regulation 10(b).

sexual harassment of a person includes the following:

- (a) an unwelcome act of physical intimacy with the person;
- (b) an unwelcome demand or request (whether explicit or implicit) for sexual favours from the person;
- (c) an unwelcome remark with sexual connotations made toward the person;
- (d) any other unwelcome conduct of a sexual nature toward, or in the presence of, the person.

urine test, for Part 3, see regulation 10(c).

Part 2 Misconduct

3 Misconduct

- (1) For section 69(2)(b) of the Act, the following constitutes misconduct:

- (a) engaging in conduct mentioned in Schedule 1;

- (b) attempting to engage in conduct mentioned in Schedule 1;
 - (c) doing, or not doing, something for the purpose of encouraging or facilitating another person to engage in conduct mentioned in Schedule 1.
- (2) However, engaging in conduct mentioned in subregulation (1) does not constitute misconduct if the prisoner was authorised by a correctional services officer to engage in the conduct.

4 Privileges that may be withdrawn

For section 78(2)(c) of the Act, the privileges listed in Schedule 2 are prescribed.

5 Reduction of rate of pay

For section 78(2)(d) of the Act, the prescribed percentage is 75% of the rate otherwise payable for carrying out the work.

6 Other penalties for misconduct

- (1) For section 78(2)(g) of the Act, ordering the prisoner to pay a fine of not more than \$200 is prescribed.
- (2) If a prisoner is ordered to pay a fine, it is payable to the Territory.
- (3) If a prisoner is ordered to pay a fine and has not done so within the time required by the order, the Commissioner may deduct the amount of the fine from the prisoner's trust account.

7 Misconduct charge and procedure to be explained

At the start of misconduct proceedings, the decision maker must explain the following to the prisoner, in language likely to be understood by the prisoner:

- (a) the basis on which the prisoner has been charged with engaging in misconduct;
- (b) the penalty that may be imposed if the prisoner is found to have engaged in misconduct;
- (c) the procedure to be followed in the proceedings;
- (d) the prisoner's rights under sections 71(6) and 72 of the Act;
- (e) that if the prisoner gives evidence, he or she may be cross-examined.

8 Interpreter

- (1) This regulation applies in relation to misconduct proceedings if:
 - (a) the prisoner requests the assistance of an interpreter; and
 - (b) the decision maker considers that the assistance is reasonably necessary for the prisoner to properly understand the proceedings.
- (2) The General Manager must ensure that an interpreter is made available to the prisoner during the proceedings.

Part 3 Alcohol and drug testing

Division 1 Preliminary matters

9 Definitions

In this Part:

blood analysis, see regulation 10(e).

breath analysis, see regulation 10(d).

breath test, see regulation 10(a).

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

phlebotomist means person who has been trained to take samples of blood from persons by a registered training organisation (as defined in section 3 of the *National Vocational Education and Training Regulator Act 2011* (Cth)).

prescribed breath analysis instrument, see section 3(1) of the *Traffic Act*.

saliva test, see regulation 10(b).

urine test, see regulation 10(c).

10 Prescribed tests

For section 195(1)(a) of the Act, the following tests are prescribed:

- (a) a test of a sample of a person's breath to detect whether alcohol may be present in the person's breath carried out using a device designed for that purpose (a **breath test**);
- (b) a test of a sample of a person's saliva to detect whether a drug may be present in the person's body carried out using a device designed for that purpose (a **saliva test**);
- (c) a test of a sample of a person's urine to detect whether a drug may be present in the person's body carried out using a device designed for that purpose (a **urine test**);
- (d) an analysis of a sample of a person's breath to ascertain the concentration of alcohol in the person's breath carried out using a prescribed breath analysis instrument (a **breath analysis**);
- (e) an analysis of a sample of a person's blood to do either or both of the following:
 - (i) detect whether alcohol or a drug may be present in the person's body;
 - (ii) ascertain the concentration of alcohol or a drug in the person's body (a **blood analysis**).

11 Prescribed samplers

For section 195(1)(b) of the Act, a person is a prescribed sampler for a prescribed test if the person is authorised under regulation 16, 17 or 18 to take a sample for the test.

Division 2 When certain tests may be required

12 When breath, saliva or urine test may be required

- (1) A correctional services officer who has authority to give a direction under section 37, 51, 145 or 172 of the Act must not direct a person to submit to a breath test, saliva test or urine test unless the officer considers it reasonable to do so.
- (2) For the direction to be reasonable, it is not necessary that the correctional services officer suspects that the person has alcohol or a drug in his or her body.

13 When breath analysis may be required

A correctional services officer who has authority to give a direction under section 37, 51, 145 or 172 of the Act must not direct a person to submit to a breath analysis unless:

- (a) the person:
 - (i) has been directed under that section to submit to a breath test; and
 - (ii) does not provide a sample as required under section 195(2)(a) of the Act; or
- (b) the officer reasonably believes that the person may have alcohol in his or her body.

14 When blood analysis may be required

A correctional services officer who has authority to give a direction under section 37, 51, 145 or 172 of the Act must not direct a person to submit to a blood analysis unless one of the following applies:

- (a) the person:
 - (i) has been directed under that section to submit to a breath test, breath analysis, saliva test or urine test; and
 - (ii) does not provide a sample as required under section 195(2)(a) of the Act;
- (b) as a result of a breath test the officer suspects that the person may have alcohol in his or her body and it is not practicable to conduct a breath analysis;
- (c) as a result of a breath test, breath analysis, saliva test or urine test the officer suspects that the person may have a drug in his or her body;
- (d) the person has a medical condition that hinders the person's ability to give a sample for a breath test, breath analysis, saliva test or urine test.

15 When non-custodial offenders may be tested

A probation and parole officer who has authority to give a direction under section 172 of the Act must not direct a non-custodial offender to submit to a prescribed alcohol/drug test unless one of the following applies:

- (a) if the test is to detect the presence, or ascertain the concentration of, alcohol – the offender is prohibited under his or her non-custodial order or the Act from consuming alcohol;
- (b) the test is to detect the presence, or ascertain the concentration of, a restricted drug (as defined in regulation 3 of the *Correctional Services (Non-Custodial Orders) Regulations*).

Division 3 Carrying out of tests

16 Carrying out of breath test, saliva test or urine test

A breath test, saliva test or urine test (including the taking of the sample) must be carried out by one of the following:

- (a) a correctional officer;
- (b) for a non-custodial offender – a probation and parole officer;
- (c) a police officer;
- (d) a person approved, or in a class of persons approved, in writing by the Commissioner.

17 Carrying out of breath analysis

A breath analysis (including the taking of the sample) must be carried out by:

- (a) a person authorised under the *Traffic Act* to use a prescribed breath analysis instrument; or
- (b) a person approved, or in a class of persons approved, in writing by the Commissioner.

18 Carrying out of blood analysis

(1) The taking of a sample for a blood analysis must be carried out by:

- (a) a health practitioner; or
- (b) a phlebotomist.

- (2) The analysis of the sample must be carried out by a pathologist.

Division 4 Evidentiary matters

19 Evidentiary certificates

- (1) This regulation prescribes the prescribed certifiers and certifiable matters for section 201 of the Act.
- (2) The Commissioner may issue an evidentiary certificate in relation to the fact that on a specified date:
- (a) a specified person was any of the following:
 - (i) the Commissioner;
 - (ii) the General Manager of a custodial correctional facility;
 - (iii) a correctional officer;
 - (iv) a probation and parole officer;
 - (v) a person approved by the Commissioner under regulation 16(d) or 17(b); or
 - (b) a specified class of persons was approved by the Commissioner under regulation 16(d) or 17(b).
- (3) The Commissioner of Police may issue an evidentiary certificate in relation to the fact that on a specified date a specified person was any of the following:
- (a) a police officer;
 - (b) a person authorised as mentioned in regulation 17(a).
- (4) A person mentioned in regulation 16 may issue an evidentiary certificate in relation to the following:
- (a) that he or she carried out a breath test, saliva test or urine test on a sample given by, or taken from, a specified person;
 - (b) when and how the sample was given or taken and the test was carried out;
 - (c) the results of the test.

- (5) A person mentioned in regulation 17 may issue an evidentiary certificate in relation to the following:
- (a) that he or she carried out a breath analysis on a sample of breath given by a specified person;
 - (b) when and how the sample was taken and the analysis was carried out;
 - (c) the results of the analysis.
- (6) A health practitioner or phlebotomist may issue an evidentiary certificate in relation to the following:
- (a) that he or she took a sample of blood from a specified person;
 - (b) when and how the sample was taken;
 - (c) what he or she did with the sample.
- (7) A pathologist may issue an evidentiary certificate in relation to the following:
- (a) that he or she carried out an analysis of a sample of blood identified as having been taken from a specified person at a specified date and time;
 - (b) when and how the analysis was carried out;
 - (c) the results of the analysis.

Part 4 Miscellaneous matters

20 Leave permit condition

For section 111(c) of the Act, it is a condition of a leave permit that the prisoner must not consume or purchase alcohol or a drug (other than as prescribed by a health practitioner).

21 Monitoring devices

For section 165 of the Act, definition ***monitoring device***, paragraph (a)(iii), the purpose of monitoring a prisoner's compliance with a leave permit is prescribed.

22 Notification of seizure of mail

- (1) This regulation applies if the General Manager of a custodial correctional facility:
 - (a) is given:
 - (i) an item of mail under section 155(2) or (4) or 157(2) of the Act; or
 - (ii) a thing that has been removed from an item of mail under section 155(5)(a) of the Act; and
 - (b) seizes the mail or thing under section 157(3)(c) of the Act.
- (2) The General Manager must inform the prisoner by or to whom the mail was sent that the mail or thing has been seized and will be dealt with by the Commissioner under section 158 of the Act.

23 Prisoner welfare

The Commissioner must ensure that a prisoner is provided with:

- (a) food of sufficient quantity and quality to maintain the prisoner in good health; and
- (b) the opportunity for such exercise to maintain the prisoner in good health as it is reasonably practicable to provide; and
- (c) sufficient clothing of a kind that is:
 - (i) suitable for the climate; and
 - (ii) if the prisoner is required to carry out work – suitable for carrying out that work.

24 Oath of office

- (1) The Commissioner, the General Manager of a custodial correctional facility or a correctional officer must take an oath of office before performing any of the functions of the office.
- (2) The oath must be in the form set out in Schedule 4.

Part 5 Awards**25 Commissioner may confer awards**

- (1) The Commissioner may confer an award mentioned in Schedule 3 on a person who is or was a correctional services officer or employee of the Agency if the Commissioner is satisfied that the person satisfies the criteria for that award mentioned in Schedule 3.
- (2) An award may be conferred posthumously.

26 Form of decorations

The decorations for an award are to be in a form determined by the Commissioner.

27 Wearing of decorations

- (1) The recipient of an award:
 - (a) may wear the decorations for the award:
 - (i) on a ceremonial occasion; or
 - (ii) on any other occasion approved by the Commissioner; and
 - (b) if the decorations for the award include a ribbon – may wear the ribbon on the right breast of his or her uniform or clothing while he or she is on duty or at work.
- (2) A person commits an offence if the person:
 - (a) wears any of the decorations for an award conferred under this Part; and
 - (b) is not the recipient of the award.

Maximum penalty: 50 penalty units.

28 Revocation of conferral of award

- (1) The Commissioner may revoke the conferral of an award.
- (2) A person commits an offence if:
 - (a) the conferral of an award on the person is revoked; and
 - (b) the person knows that the award has been revoked; and

- (c) the person fails to return the decorations for the award to the Commissioner within 28 days after the revocation.

Maximum penalty: 50 penalty units.

29 Awards register

The Commissioner must keep a register of awards conferred under this Part.

Part 6 Transitional provisions for Correctional Services Regulations

30 Awards

For Schedule 3, items 5 and 6:

- (a) the reference to a period of service includes a reference to service before the commencement of these Regulations; and
- (b) a reference to the Agency includes, in relation to a period before that commencement, a reference to the Agency from time to time administering the repealed *Prisons (Correctional Services) Act*.

31 Oath of office

Regulation 24 does not apply to a person to whom section 211 of the Act applies.

Schedule 1 Misconduct

regulation 3

- 1 Failing to comply with a provision of the Act that requires a prisoner to do or not do something.

Examples for item 1

Provisions of the Act that require a prisoner to do or not do something include the following:

- (a) *section 42(1) – compliance with general routine of custodial correctional facility;*
- (b) *section 42(2) – compliance with directions;*
- (c) *section 51(1) – alcohol/drug testing;*
- (d) *section 52(1) – buccal swabs;*
- (e) *section 53(1) – identity confirmation.*

- 2 Conduct that constitutes an offence against the Act.

Examples for item 2

Offences against the Act include the following:

- (a) *section 176(2) – giving something to another person;*
- (b) *section 183 – removing something from custodial correctional facility;*
- (c) *section 187 – obstructing a correctional services officer;*
- (d) *section 188 – giving misleading information to a correctional services officer;*
- (e) *section 191 – tampering with a sample given or taken for an alcohol/drug test.*

- 3 Conduct that is riotous, disorderly or otherwise threatens the security and good order of a custodial correctional facility.

- 4 Being unlawfully absent from a custodial correctional facility.

- 5 Being in part of a custodial correctional facility in which the prisoner is not authorised to be.

- 6 Failing to attend a muster, or avoiding a count, of prisoners.

- 7 Sexually harassing a person.

- 8 Conduct (including using language) that is insulting or threatening.

- 9 Abusing the prisoner's rights to receive visits, send and receive mail and make and receive telephone calls.

Examples for item 9

Conduct that might constitute such abuse includes the following:

- (a) *sending mail that purports to be a protected/legal item but is not;*
- (b) *making a telephone call to a person who the prisoner is prohibited by a court order from contacting;*
- (c) *arranging to have another person send a prohibited thing to the prisoner by disguising it as a protected/legal item;*

(d) *sending mail to a person whom the prisoner is prohibited by a court order from contacting.*

10 Abusing the prisoner's privilege to use a computer or other electronic device.

Examples for item 10

Conduct that might constitute such abuse includes the following:

(a) *using a computer to create threatening letters;*

(b) *using audio equipment to create a disturbance.*

11 Feigning or exaggerating illness or an injury.

12 Consuming, taking, administering, smoking or otherwise ingesting any of the following:

(a) alcohol;

(b) tobacco;

(c) medication (other than medication prescribed for the prisoner by a health practitioner);

(d) a drug;

(e) anything else likely to induce an intoxicated state.

13 Giving or administering anything mentioned in item 12 to another prisoner.

14 Manufacturing anything mentioned in item 12.

15 Tattooing or body piercing any person.

16 Altering the prisoner's appearance in a way that could reasonably affect the ability of correctional officers to identify the prisoner.

17 Gambling.

18 Being in possession of something that is not an allowable item.

19 Lending or selling something to another prisoner for gain.

20 Damaging property (other than the prisoner's own property).

Examples for item 20

Property that might be damaged includes the following:

(a) *a thing at a correctional services establishment that is owned or used by the Territory;*

(b) *possessions of another prisoner or a visitor;*

(c) *clothing or personal items issued to the prisoner or another prisoner;*

(d) *plants growing at the custodial correctional facility;*

(e) *property at a place where the prisoner is working outside the custodial correctional facility.*

- 21 Interfering with fixtures and fitting, security equipment or other property at the custodial correctional facility.

Examples for item 21

Conduct that might constitute interfering with property includes the following:

- (a) picking locks;*
 - (b) disabling cameras or security sensors;*
 - (c) tampering with lighting.*
- 22 Removing the prisoner's identification document or device.
- 23 Altering a document or device used to identify the prisoner, or creating a false document or device.
- 24 Failing to comply with a condition of a leave permit.
- 25 Making a malicious or frivolous complaint about a correctional services officer or another prisoner to a General Manager, the Commissioner or a protected correspondent.

Schedule 2 Privileges that may be withdrawn

regulation 4

- 1 Attendance at or participation in any of the following:
 - (a) the showing of a film or video;
 - (b) a concert or other performance;
 - (c) any other organised leisure time activity.
- 2 Use of, or access to, (whether individually or as a member of a group) any of the following:
 - (a) audio or audiovisual equipment or content;
 - (b) a musical instrument.
- 3 Use of library facilities, except to the extent that the use is reasonably necessary for the purposes of a course of study or training in which the prisoner is enrolled.
- 4 Possession of allowable items, other than essential toiletries.
- 5 Purchasing of allowable items, other than essential toiletries.
- 6 Receiving visits, other than priority/legal visits.
- 7 Making or receiving telephone calls, other than priority/legal calls.
- 8 Purchasing of telephone credits.
- 9 Participation in hobbies.
- 10 Associating with a particular prisoner or group of prisoners.
- 11 Leave permits granted at prisoner's request.

Schedule 3 Awards

regulation 25

	Award	Criteria
1	Bravery medal	Conduct of conspicuous merit involving an act of exceptional bravery
2	Commendation for brave conduct	An act of bravery
3	Exemplary Conduct Cross	Conduct or service characterised by initiative, leadership or distinctive devotion to duty
4	Unit Citation	Performance of outstanding service as part of a unit
5	Service Medal	Completion of 10 years of satisfactory service to the Agency
6	Service Medal – clasp	Completion of a second or subsequent 10 years of satisfactory service to the Agency

Schedule 4 Oath of office

regulation 31

I, _____ *[promise/ swear etc. as required by Oaths, Affidavits and Declarations Act]* that I:

- (a) will perform the functions of the office of *[name of office]* lawfully, impartially and in good faith; and
- (b) will uphold the Northern Territory Department of Correctional Services Code of Conduct; and
- (c) will not bring the Department of Correctional Services into disrepute.

[So help me God! or as appropriate]