

NORTHERN TERRITORY OF AUSTRALIA

Regulations 1994, No. 26*

Regulations under the *Prisons*
(*Correctional Services*) Act

I, KEITH JOHN AUSTIN ASCHE, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, hereby make the following Regulations under the *Prisons (Correctional Services) Act*.

Dated 31 August 1994.

K.J.A. ASCHE
Administrator

PRISONS (CORRECTIONAL SERVICES) REGULATIONS

1. CITATION

These Regulations may be cited as the *Prisons (Correctional Services) Regulations*.

2. COMMENCEMENT

These Regulations shall come into operation on the commencement of the *Prisons (Correctional Services) Amendment Act 1994*.

3. PRISON MISCONDUCT

- (1) A prisoner who -
 - (a) disobeys a rule or standing order of the prison or a lawful order of an officer having control or authority over the prisoner;
 - (b) is idle, negligent or careless in his or her work or, without reasonable excuse, is absent from his or her work, or refuses to work;

* Notified in the *Northern Territory Government Gazette* on 14 September 1994.

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PRISONS (CORRECTIONAL SERVICES) REGULATIONS

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- (c) behaves in a disorderly manner;
- (d) swears or uses indecent language or language calculated to offend;
- (e) uses insulting or threatening language or behaves in an insulting or threatening manner;
- (f) pretends illness or injury;
- (g) wilfully or maliciously breaks, damages or destroys any property;
- (h) makes a false or frivolous complaint against an officer;
- (j) does any act or omission of insubordination or misconduct subversive to the order and good government of the prison;
- (k) introduces into food or drink anything liable to render it unpalatable or unwholesome;
- (m) interferes, without the approval of an officer, with locks, lights or other property in a prison;
- (n) intentionally damages, without the approval of an officer, any tree or shrub in a prison;
- (p) contravenes or fails to comply with a term or condition of a grant of leave of absence from a prison;
- (q) manufactures or is in possession of a prison key without authorisation;
- (r) removes, damages, defaces, or interferes with any band, badge, card or other material or device used to identify a prisoner;
- (s) misuses medication or is found to have present in the prisoner's body any drugs or alcohol or, on being requested to do so, refuses to supply a sample of breath, blood or urine to a person authorised to take such a sample under section 95A of the Act;
- (t) enters an area which the prisoner is not authorised to enter or, without the approval of an officer, enters the cell of another prisoner;
- (u) is absent from a muster or count of prisoners without reasonable excuse;
- (w) lends property or possessions to another prisoner for profit;

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- (y) participates in tattooing himself or herself or another prisoner; or
- (z) sexually harasses an officer or another prisoner,

is guilty of prison misconduct.

(2) For the purposes of subregulation (1)(z), "sexual harassment" means -

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

(3) For the purposes of subregulations (1)(z) and (2), a reference to an officer includes a person authorised to carry out a function under the Act, and an employee within the meaning of the *Public Sector Employment and Management Act* acting in the course of their employment.

4. PROCEDURE AT HEARING OF PRISON MISCONDUCT

(1) Where a prisoner charged with prison misconduct denies the charge, the procedure at the hearing of the charge under Part VIII of the Act shall be as follows:

- (a) at the commencement of the hearing, the officer in charge of the prison shall read out the charge to the prisoner and explain to the prisoner, in language likely to be readily understood -
 - (i) the nature of the charge;
 - (ii) the penalty that may be imposed if the charge is proved;
 - (iii) the procedure that is to be followed at the hearing; and
 - (iv) that the prisoner need not give evidence at the hearing, but if the prisoner chooses to do so the prisoner will be liable to be cross-examined;

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- (b) the prosecuting officer shall state the case against the prisoner and call any witnesses in support of the charge;
 - (c) the officer in charge of the prison may take evidence on oath, affirmation or otherwise at the officer's discretion and, for that purpose, may administer an oath;
 - (d) the prosecuting officer shall conduct the examination in chief of each witness and the prisoner may cross-examine each witness;
 - (e) the prosecuting officer may re-examine a witness on matters arising out of cross-examination by the prisoner or arising out of a question that the officer in charge of the prison put to the witness;
 - (f) the prosecuting officer shall then close the case;
 - (g) the prisoner may then give evidence on his or her own behalf and call any witnesses he or she wishes, and paragraphs (d), (e) and (f), with necessary modification, apply to and in relation to the prisoner and any witness called by the prisoner.
- (2) The officer in charge of a prison, in conducting a hearing under Part VIII of the Act -
- (a) shall conduct the hearing with as little formality and technicality, and with as much expedition as the requirements of these Regulations and a proper consideration of the matter permit;
 - (b) shall keep or cause to be kept an adequate record of the proceedings and shall, if the prisoner so requests, provide the prisoner with a copy of the record of proceedings;
 - (c) may question a witness called to give evidence at the hearing;
 - (d) may direct that a witness be called to give evidence at the hearing; and
 - (e) shall, not later than 3 days after the hearing and in accordance with the approved form, notify the prisoner of the decision and of the penalty, if any, to be imposed under the Act.

5. ADMISSION OF CHARGE OF PRISON MISCONDUCT

Where a prisoner charged with prison misconduct admits the charge, the officer in charge of the prison may if he or she thinks fit, without conducting a hearing, notify the prisoner of the penalty, if any, to be imposed under the Act.

6. PRESCRIBED PRIVILEGES

For the purpose of section 33(b) of the Act -

- (a) attendance at the showing of a film or video or at a concert or other performance;
- (b) participation in or attendance at an organised leisure time activity;
- (c) use of or access to films or video or audio tapes or records;
- (d) use of or access to television, radio or video or cassette players, whether for personal use or for use as a member of a group;
- (e) use of library facilities;
- (f) ability to purchase goods;
- (g) access to issues of tobacco;
- (h) access to a musical instrument, whether for personal use or as a member of a group;
- (j) participation in hobbies;
- (k) participation in contact visits; and
- (m) leave of absence,

are prescribed privileges.

7. PENALTY NOT TO BE IMPOSED UNTIL APPEAL PERIOD EXPIRES

(1) A penalty ordered to be imposed under the Act shall be suspended until the expiration of the period referred to in regulation 8(1).

(2) Notwithstanding subregulation (1), where a prisoner, in the approved form, waives his or her right to appeal under the Act, the officer in charge of the prison may carry out the penalty or order that the penalty be imposed immediately.

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8. APPEAL PROCEDURE

(1) A prisoner aggrieved by a penalty ordered to be imposed under the Act may, not later than 3 days after receiving notification of the penalty to be imposed, in the approved form, appeal to the Director against the imposition of the penalty.

(2) An appeal under the Act shall not be commenced where a prisoner has under regulation 7(2), waived his or her right to appeal.

(3) Subject to the Act and these Regulations, the procedures in and in relation to an appeal (including where necessary, the taking of evidence) are at the discretion of the Director.

(4) An appeal shall be by way of a review of the evidence taken into account at the hearing of the charge but where the appellant satisfies the Director that there is additional evidence that was not available at the hearing, the Director may, in his or her discretion, admit that evidence.

(5) The Director shall conduct an appeal with as little formality and technicality, and with as much expedition, as the requirements of these Regulations and a proper consideration of the matter permit.

(6) If the Director thinks fit, an appeal may be determined without a hearing.

(7) Where the Director conducts an appeal without holding a hearing, each party is entitled to tender written evidence or other material.

(8) Where the Director conducts an appeal by holding a hearing -

(a) he or she shall give reasonable notice to the appellant, the officer in charge of the prison concerned and any other person who is to be required to give evidence at the appeal of the time and place at which the appeal is to be heard;

(b) the prisoner and the officer in charge of the prison are entitled to appear and to tender evidence; and

(c) he or she may -

(i) summon a person whose evidence appears to be material to the appeal;

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- (ii) take evidence on oath, affirmation or otherwise at his or her discretion and, for that purpose, may administer an oath; and
- (iii) require a person to produce documents or records in the person's possession or under the person's control which appear to be material to the appeal.

(9) The Director shall give notice of his or her decision in writing served on the appellant and the officer in charge of the prison.

9. APPROVED FORMS

The Director may approve such forms as are necessary for the purposes of these Regulations.

10. REPEAL

The Prisons (Correctional Services) Regulations (Regulations 1981, No. 9 and 1982, No. 24) are repealed.
