

2010

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CORRECTIONS MANAGEMENT REGULATION 2010

SL2010-52

EXPLANATORY STATEMENT

Circulated by authority of
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CORRECTIONS MANAGEMENT REGULATION 2010

Outline

The Corrections Management Regulation 2010 (the Regulation) is made under sections s78, 152, 220 and 222 of the *Corrections Management Act 2007* (the Act).

The Act governs the treatment and management of detainees in the Territory. This includes detainees in the Alexander Maconochie Centre, the Symonston facility and the Magistrates Court and Tribunal and Supreme Court cells, as well as any future correctional centres.

The Act prescribes the minimum conditions and management of people whose right to liberty is lawfully limited. Areas covered by the Act include admission, living conditions, searches, segregation, alcohol and drug testing, the use of force, disciplinary processes and leave processes.

The Act is informed by human rights jurisprudence and is compatible with the Territory's *Human Rights Act 2004*. Human rights principles to be followed in application of the Act include:

- the criminal justice system should respect and protect all human rights in accordance with the *Human Rights Act* and international law;
- the deprivation of liberty is the punishment that flows from a sentence of imprisonment. The conditions of imprisonment and the management of prisoners are not to be so harsh as to create an additional punishment to the sentence;
- the rehabilitation and reintegration of detainees into society should be promoted; and
- detainees should be treated in a decent, humane and just way.

In addition to adherence to human rights principles, the Government is bound to make sure that people found guilty of breaking the law are themselves treated lawfully. This will maintain the community's confidence in the criminal justice system.

The Regulation ensures a detainee's right to health care is equivalent to that provided to the ACT community. This incorporates the right to compensation for injuries suffered at work.

The Regulation establishes a detainee injury compensation scheme modelled on the ACT Workers Compensation Scheme with appropriate modifications for the correctional setting. Like the ACT Workers Compensation Scheme, the Regulation details when a detainee is entitled to compensation for injury, medical treatment, damages and for death. An injury management process and a schedule outlining the amount of compensation payable dependant on the type of injury suffered are also set out.

The Regulation also provides additional mechanisms required for the practical management of correctional centres including additional disciplinary breaches and the setting out of the Commonwealth services delivery agency (Centrelink) as a prescribed entity for the purposes of information exchange.

The Regulation is also made under section 224 of the Act to make provision for the approval, by the chief executive of ACT Corrective Services, of the training requirements for dogs that are to be used for exercising functions under the Act.

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Detail

Part 1 — Preliminary

Clause 1 — Name of Regulation

Clause 1 names the short title of the Regulation.

Clause 2— Commencement

Clause 2 fixes the date for commencement of the Regulation.

Clause 3 – Dictionary

Clause 3 states that the dictionary in the Regulation is part of the Regulation.

Clause 4 – Notes

Clause 4 states that the notes in the Regulation are explanatory and not part of the Regulation.

Clause 5 – Offences against regulation – application of Criminal Code etc

Clause 5 provides that other legislation applies in relation to offences against the regulation.

Part 2 — Compensation and injury management for detainees etc – Act s220(2)

Section 220 of the Act provides for a personal injury management scheme to manage any injuries sustained by detainees in the course of detention or by offenders who are directed to do community service work. Section 220(2) of the Act provides for the drafting of regulations to manage injuries, enable vocational rehabilitation and where necessary establish a system for compensation for a permanent injury and payments of death benefits.

Part 2 creates a scheme for injury management, vocational rehabilitation, compensation and death benefits for detainees.

Division 2.1 Preliminary

Clause 6 – Definitions - pt 2

Clause 6 defines compensable injury, injured person and loss for the purposes of Part 2. Maximum Loss amount and single loss amount are also explained by reference to the *Workers Compensation Act 1951* and are adjusted over time in accordance with the Consumer Price Index.

Clause 7 – Meaning of injury

Clause 7 defines injury which includes mental injury for the purposes of Part 2. Mental injury does not include mental injury (including stress) that is caused by the

reasonable discipline of a detainee or offender. This is considered appropriate in the corrections setting.

Division 2.2 Entitlement to compensation

Clause 8 – General entitlement to compensation for injury

Clause 8(1) sets out that compensation is payable if a detainee is injured in the course of their detention or if an offender is injured whilst undertaking community service work.

This section is intended to ensure compensation is payable to a person that is injured both within a correctional facility and those injured outside of a correctional facility whilst carrying out community service work.

Clause 8(2) provides that an injury caused by a disease will only be considered to have been caused by the detention or work if the detention or work substantially contributes to the injury.

Clause 8(3) lists four pre existing conditions. An injury resulting from a pre existing condition will only be taken to have been caused by detention or work if the detention or work substantially contributes to the injury.

Division 2.3 Compensation for loss

Clause 9 – Compensation for loss generally

Clause 9 provides that if a person suffers a loss itemised in Schedule 1, they are entitled to the percentage of the single loss amount noted against that loss. This loss will be established when it is unlikely there will be further improvement of the injured part of the body. However, if there is further deterioration in the use of the injured part of the body there is nothing preventing an additional payment of compensation.

An example of a loss of efficient use of an injured part of the body is provided.

Clause 10 – Compensation for 2 or more losses

Clause 10 sets out that if a person suffers two or more losses because of one injury they are not entitled to compensation that is more than the maximum loss amount.

Clauses 11, 12, 13, 14, and 15

Clauses 11, 12, 13, 14, and 15 outline how to work out the compensation payable in relation to:

- injury to an arm, hand or fingers,
- injury to a combination of body parts (for further explanation examples are provided),
- injury only to an arm, leg hand or foot,
- injury to sexual organs,
- injury to bowel function.

Clause 16 – Proportionate loss of use

Clause 16 stipulates how to work out the compensation payable if a person suffers a loss of a proportion of a body part rather than a total loss. The use of an external removable aid or appliance is not to be taken into account. Further, the amount of compensation payable under this clause must be decided by agreement or worked out by conciliation or arbitration.

Clause 17 – Special provisions for HIV/AIDS

Clause 17 provides that compensation is not payable if HIV/AIDS is contracted during voluntary sexual activity or illicit drug use. The definition of AIDS and HIV infection are also provided.

Clause 18 – Deduction for previous injury or pre-existing condition

Clause 18 sets out how to work out the compensation payable if an injured person suffers from a previous injury or pre-existing abnormality or condition that would have contributed to their loss. An amount must be deducted from the total compensation for any proportion of the loss attributable to the previous injury or pre-existing abnormality or condition. For further explanation, an example is provided.

Clause 19 – Further loss and deductible proportions

Clause 19 sets out how to work out the compensation payable if an injured person suffers further loss resulting from an initial loss.

Clause 20 – Loss of hearing because of age

Clause 20 outlines how to work out the compensation payable to a person from boilermakers deafness while taking into account loss of hearing because of age which is not compensable.

Clause 21 – No compensation for less than 6% hearing loss

Clause 21 provides that compensation is only payable to a person for hearing loss if their total hearing loss reaches 6% or more. The definition of total hearing loss is also provided. For further explanation an example is provided.

Clause 22 – Limited entitlement if death happens within 3 months

Clause 22 provides that a person will not be entitled to compensation for certain items of loss in Schedule 1 if the person dies within 3 months after receiving the compensable injury.

Division 2.4 Compensation for medical treatment, damage and other costs**Clause 23 - Liability for medical treatment etc**

Clause 23 outlines that the Territory is liable for:

- the cost of reasonable medical treatment in relation to a compensable injury;
- the cost of rehabilitation services received by an injured person in relation to a compensable injury; and
- the cost of any damage or loss to an injured person's clothes sustained in associated with the compensable injury.

For further clarity three notes are provided.

A method of determining these costs is set out. Further, if the Territory has provided treatment without cost to the injured person the injured person is not entitled to compensation under this clause.

Clause 24 – Reimbursement for costs of medical certificate and examination

Clause 24 states when an injured person is entitled to reimbursement for costs of a medical certificate and examination. The definition of medical certificate is provided.

Division 2.5 Compensation for death

Clause 25 – Death benefits

Clause 25 sets out the amount of compensation payable to the dependants of an injured person who dies as a result of a compensable injury. This includes:

- a single lump sum payment;
- weekly compensation for each dependant who is a child; and
- the funeral expenses of the injured person.

These amounts are determined by reference to s77 of the *Workers Compensation Act 1951*.

Clause 26 – Payment into tribunal of lump sum death benefits

Clause 26 provides that a lump sum payment made under clause 25 must be paid to the public trustee. The public trustee must deal with the money in accordance with section 25(3) of the *Public Trustee Act 1985* as if the lump sum was payable compensation under the *Workers Compensation Act 1951*.

Division 2.6 Exceptions to entitlements to compensation

Clause 27 – When is compensation generally not payable?

Clause 27 states when compensation is not payable to an injured person for a compensable injury. This includes when:

- the injury or death is caused by an intentionally self inflicted injury; and
- the injury is attributable to a person's serious and wilful misconduct.

This clause also sets out how to work out if a person's injury is attributable to the serious and wilful misconduct of the person and includes being voluntarily under the influence of alcohol or another drug. The definition of drug is provided by reference to the *Road Transport (Alcohol and Drugs) Act 1977*.

Division 2.7 Injury management process

Subdivision 2.7.1 Definitions

Clause 28 – Definitions – div 2.7

Clause 28 is a technical clause that defines important terms in Division 2.7 including injury management and personal injury plan.

Subdivision 2.7.2 General obligations

Clause 29 – Register of injuries

Clause 29 provides that a register of injuries must be kept. A corrections officer must enter the details of an injury received by the injured person in the register if requested to do so by the injured person or their representative. It is an offence to change, damage, deface, remove or otherwise interfere with register. This offence is a strict liability offence.

Clause 30 – Injury notice

Clause 30 provides out that an injured person must tell a corrections officer of the injury as soon as possible after the injury. The corrections officer must then assist the injured person in completing an injury notice. This clause outlines what details must be included in the injury notice.

As soon as possible after the injury notice is completed, the injured person must give a copy of the notice to the chief executive, the ACT Insurance Authority and relevant doctor.

Clause 31 – Liability not affected

Clause 31 establishes that anything done in relation to a personal injury plan or in relation to rehabilitation services or other measures is not an admission of liability by the Territory.

Subdivision 2.7.3 Obligations in relation to person injury plans

Clause 32 – Personal injury plan for injured person with significant injury

Clause 32 sets out that a personal injury plan must be established for an injured person with a significant injury. The definition of significant injury is also provided.

Clause 33 – Vocational rehabilitation

Clause 33 provides that when vocational rehabilitation is included in a personal injury plan it must be of a kind that is reasonably likely to lead to a real prospect of employment for the injured person.

Clause 34 – Injured person’s personal injury plan obligations

Clause 34 stipulates that an injured person must take part and cooperate in the establishment of the personal injury plan and in the reasonable obligations detailed in the plan. This includes medical treatment and rehabilitation services.

Subdivision 2.7.4 Compensation and common law damages

Clause 35 – No compensation if damages received

Clause 35 provides that an injured person who has obtained a judgement or agreement for common law damages in relation to an injury or death is not to receive compensation under Part 2 in relation to that injury or death. It is also established that the Territory can recover an amount of compensation paid under Part 2 (the recoverable amount) if an injured person later receives common law damages in

respect of the same injury or death. A method for determining the recoverable amount is also provided.

Division 2.8 Making a claim for compensation

Clause 36 – Making a claim

Clause 36 provides that an injured person may claim compensation by completing a claim form (claim for compensation). If a form is approved under the Act, this form must be used for any claim.

A claim for compensation must be given to the Chief Executive and the ACT Insurance Authority. Additionally, if the injured person is a detainee in a correctional centre, the claim for compensation must be given to the doctor appointed to the correctional centre. If the injured person is not a detainee, the claim for compensation must be given to the person's treating doctor. If there is no treating doctor, the claim must be given to a doctor who has treated the person for the injury.

A claim for compensation must be accompanied by a medical assessment of the injured person. A claim for compensation is made on the day it is given to the ACT Insurance Authority.

Clause 37 – Time for making claim

Clause 37 provides that a claim for compensation must not be made earlier than 2 years after the injury unless the ACAT allows the claim to be made or the injury has stabilised.

The ACAT may only allow a claim to be made earlier than 2 years after the injury if satisfied that an early application is justified due to the severity of the injury or the prospect of the injured person's imminent death.

Clause 38 – Medical assessment

Clause 38 provides that a medical assessment of an injured person must be carried out in accordance with medical guidelines approved under section 5(1)(b) of the *Workers Compensation Regulation 2002*.

Clause 39 – Assessment by medical specialist—request by other than nominated treating doctor

Clause 39 provides that an injured person, an injured person's lawyer, the chief executive and the ACT Insurance Authority may ask a medical specialist to do a medical assessment of an injured person.

At least 2 weeks prior to the medical assessment, written notice of the request must be given. If the request is made by the injured person or their lawyer, the notice must be given to the chief executive and the ACT Insurance Authority. If the request is made by the chief executive or the ACT Insurance Agency, the notice must be given to the injured person and their lawyer. Giving less than 2 weeks notice does not prevent a medical assessment from being carried out if the parties agree to the shorter notice.

A notice given under this clause must state the reason for the request and why the medical specialist is the appropriate specialist for the medical assessment.

The person making the request for a medical assessment and any person who receives a notice under this clause must give the medical specialist all medical evidence about the injured person they have. This must be provided to the medical specialist at least 2 working days before the day of the medical assessment.

This clause does not apply if an injured person's treating doctor requests a medical assessment by a medical specialist.

Clause 40 – Specialist's report about assessment

Clause 40 provides that a medical specialist who assesses an injured person following a request to do so under clause 39 must prepare a report about the medical assessment. If the assessment made by the medical specialist differs from the medical evidence about the injured person, the specialist's report must state how and why the assessment differs and why the specialist's opinion is preferable. If there is no difference between the medical evidence and the assessment, the report must state there is no difference.

The person who requested the medical assessment to be done must give each person who gave notice under clause 39 a copy of the specialist's report within 5 days of receiving the report.

Division 2.9 Resolving compensation disputes

Clause 41 – Application to ACAT

Clause 41 provides that if an injured person and the chief executive cannot agree on the amount of compensation the Territory is liable to pay the injured person under this part, the injured person may apply to the ACAT to determine the amount.

Clause 42 – Medical referees

Clause 42 provides that the ACAT may ask a medical referee to help the tribunal assess a medical matter in an application or ask a medical referee to report on a medical matter in, or arising out from, an application.

Clause 43 – Only 1 medical referee for application

Clause 43 provides that if the ACAT requests assistance from a medical referee under clause 42, the same medical referee must assist the ACAT throughout an application. If the medical referee is unavailable for any reason, another medical practitioner may assist the ACAT.

Clause 44 – Medical referee to review medical evidence etc

Clause 44 provides that a medical referee for an application must review the medical evidence about an injured person, review any relevant approved medical guidelines or clinically relevant research and apply their clinical expertise to such reviews.

A medical referee for an application must also do a medical assessment of an injured person unless the referee considers it unnecessary. A referee's report must then be prepared taking into account all of the aforementioned factors.

Clause 45 – Medical referee's report

Clause 45 provides that a referee's report for an application must state the results of the referee's assessment of the injured person's injuries. If the assessment made by the referee differs from the medical evidence about the injured person, the referee's report must state how and why the assessment differs and why the referee's opinion is preferable. If there is no difference between the medical evidence and the assessment, the report must state there is no difference.

This clause also includes an example of why an assessment may differ to that of the medical evidence.

Part 3 Miscellaneous

Clause 46 – Information about entitlements and obligations—Act, s66(1)(f)

Section 66(1)(f) of the Act provides that a regulation may prescribe information about entitlements and obligations that should be explained to a detainee.

Clause 46 provides that the procedure for reporting work-related injuries and claiming compensation is prescribed.

Clause 47 – Case management plans – scope etc – Act, s78(3)(h)

Section 78(3)(h) of the Act provides that a case management plan may be prescribed by Regulations.

Clause 47 states that a personal injury plan is prescribed.

Clause 48 – Meaning of disciplinary breach – Act, s152(y)

Section 152 of the Act lists the disciplinary breaches to which a prisoner may be subject to disciplinary action under Division 10.3.5 of the Act. Section 152(y) of the Act provides for the drafting of a regulation that specifies additional disciplinary breaches.

In accordance with the *Human Rights Act 2004*, additional disciplinary breaches prescribed in this Clause are necessary for the effective management of Correctional Centres and are consistent with the aims of the Act in providing a secure and safe place for detainees.

Clause 48 prescribes additional disciplinary breaches which have been found necessary for the practical management of Correctional Centres. Examples include:

- failing to maintain an acceptable standard of behaviour towards all persons, such as behaving in an obscene, indecent, offensive, racist or disorderly manner;
- reporting to Periodic Detention Centre without:
 - clothing, headgear and footwear suitable for outdoor work;
 - a change of clothing; and

- toiletries and towel for personal use;
- malingering or feigning illness;
- entering another prisoner's cell, room or cottage unit without the approval of a corrections officer;
- approaching within 10 metres of fences separating different areas of the Alexander Maconochie Centre without the approval of a Corrections Officer;
- failing to comply with the Corrections Management (Visits) Policy 2009 (NI2009-166); and
- failing to comply with the Corrections Management (Prisoner Telephone) Policy 2009 (NI2009-154).

Clause 49 – Reparation - Act, s185(3)(b)

Section 185(3)(b) of the Act states that a reparation amount can be prescribed by regulation. Clause 49 prescribes this amount as \$500.

Clause 50 – Prescribed entity – Act, s222(3)(f)

Section 222 of the Act makes it a penalty for a Correctional Centre to divulge confidential information except in certain prescribed circumstances or to prescribed organisations. Section 222(3)(f) provides for the drafting of a regulation to identify entities as prescribed organisations.

Clause 39 specifies that Centrelink is a prescribed organisation and sets out what information can be divulged to Centrelink by a correctional centre.

The section is intended to ensure that a correctional centre can advise Centrelink of the imprisonment of an offender who may be in receipt of welfare benefit without relying on detainee consent. The information that can be divulged does not include the length of sentence or nature of offence. Similar information exchange arrangements exist with Centrelink in other corrections jurisdictions.

Clause 51 - Approved dogs—Act, dict, def *corrections dog*

Clause 52 provides for the chief executive of ACT Corrective Services to approve a training course for dogs used for exercising functions under the Act, pursuant to the dictionary definition of '*corrections dog*' in the Act.

Schedule 1 Compensation for loss

Schedule 1 provides a list of injuries and the percentage of the single loss amount payable to a person who suffers that injury.