

2015

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**CORRECTIONS MANAGEMENT AMENDMENT
REGULATION 2015 (No 1)
SL2015-2**

EXPLANATORY STATEMENT

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Corrections Management Amendment Regulation 2015 (No 1)

Introduction

The *Corrections Management Regulation 2010* (the Regulation) is made under section 229 of the *Corrections Management Act 2007* (the Act). Related regulation-making provisions are at sections 78, 152, 220.

The Act governs the treatment and management of detainees in the Territory. This includes detainees in the Alexander Maconochie Centre (AMC), the Symonston facility and the Magistrates Court and Tribunal and Supreme Court cells.

The Act prescribes the minimum conditions and rules for 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.

In line with human rights principles set by section 12 of the *Human Rights Act 2004*, section 222 of the Corrections Management Act provides that it is an offence for a person who exercises a function under the Act, or is involved in the administration of the Act, to divulge confidential detainee information except in certain prescribed circumstances or to prescribed entities. The penalty for this offence is 50 penalty units, imprisonment for 6 months or both.

Currently, the Regulation prescribes the Commonwealth Services Delivery Agency (Centrelink) as the sole entity to which relevant protected detainee information can be divulged and specifies the information that ACT Corrective Services (ACTCS) can supply as: full name and address; date of birth; address; offender identification number and Centrelink card number.

Outline

Effect of amendment

Section 222(3)(f) of the Act provides that the offence in section 222 (2) does not apply to disclosure of protected information if the disclosure is to an entity prescribed by regulation.

The *Corrections Management Amendment Regulation 2015 (No 1)* (amending Regulation) will prescribe the Commonwealth Department of Human Services (incorporating Centrelink) (DHS), the Commonwealth Department of Immigration and Border Protection (DIBP) and the Commissioner of Taxation within the Australian Taxation Office (ATO), as entities entitled to specific relevant protected information about a detainee.

The amending Regulation also specifies the protected information that each Commonwealth department is entitled to obtain, relevant to their legislative responsibilities.

The specific information each entity can obtain is outlined in the detail section below.

The entities can only be provided with the protected information about a detainee where the provision of such information is reasonably necessary for specific purposes which are closely tied to the functions of that entity.

Purpose of amendment

The amending Regulation will allow the ACT to provide Commonwealth agencies with protected information about detainees so that those agencies can effectively carry out their functions, reducing fraud, evasion and unauthorised provision of entitlements to detainees.

Data matching is undertaken by Australian Government agencies to cross check the data that they hold against data held by other agencies (for example, to ensure people only receive payments they are legally entitled to, or that they meet the conditions of their visa).

The DHS, DIBP and the ATO regularly request information for data matching purposes that falls outside of the categories currently provided for in the Regulation. This information cannot currently be provided to these agencies without the written consent of individual detainees, a process that is not well suited to data matching processes as a result of delays that the requirements can cause (e.g. a lack of provision of appropriate detainee identification).

As prescribed entities, the DHS and DIBP will be provided with information that will allow them to provide better services to assess, more accurately, the eligibility of detainees in the Territory.

For example, most Centrelink payments administered by DHS cease once people are detained in custody. Data matching of this nature ensures that payments do not continue once people are detained. This ensures that detainees do not accrue a Centrelink debt that they are required to repay, once released.

Additionally, DIBP often requests information about detainees who do not have citizenship or permanent residency in Australia. Data matching facilitates the statutory functions of DIBP in apprehending non-citizens on their release from ACTCS custody and determining their legal status for remaining in Australia.

The ATO may request information pertaining to detainees supervised by ACTCS in relation to their tax status. Data matching will allow the ATO to verify information relating to individual claims made by ACT detainees.

Impact on Human Rights

The disclosure of personal information engages and limits the right to privacy contained in section 12 of the Human Rights Act, which states that “Everyone has the right not to have his or her privacy . . . interfered with unlawfully or arbitrarily”.

However, the right to privacy is a qualified right and section 28 of the Human Rights Act provides legislative recognition that human rights may be limited in certain circumstances. Limitations on the right to privacy can be applied where it can be

shown that it is necessary in a free and democratic society to do so and if there is a legal basis for such interference.

On balance and considering the factors outlined in section 28, the limitation on the right to privacy is justified in this instance.

Firstly, the purpose of the limitation on the right is to reduce the likelihood of criminal deception, for example, tax evasion or Centrelink fraud. It will also support correct payments being made to detainees, even where there is no deliberate evasion or fraud.

Secondly, the limitation is restricted. The amending Regulation limits the confidential information that can be released by listing specifically what ACTCS can provide and by clearly stating the particular purpose for which it can be released.

Finally, the Act prohibits the provision of any other information by ACTCS to these or other entities. The Act provides that it is an offence for a relevant officer to divulge confidential information, beyond what is prescribed.

These safeguards will ensure that the least restrictive approach is taken and that the amending regulation is justified and proportionate to the purpose of the limitation on this right.

Corrections Management Amendment Regulation 2015 (No 1)

Detail

Clause 1 – Name of regulation

This is a technical clause that explains that the regulation is the *Corrections Management Amendment Regulation 2015 (No 1)*.

Clause 2 – Commencement

This clause provides that the regulation commences on the day after its notification.

Clause 3 – Legislation amended

This clause explains that the regulation will amend the *Corrections Management Regulation 2010*.

Clause 4 – Section 50

Clause 4 provides a substituted section 50.

Section 50 currently lists the Commonwealth Services Delivery Agency (Centrelink) as the sole entity prescribed to receive protected information about a detainee. The amending Regulation will allow certain specific protected detainee information to be

provided to the Commonwealth Department of Human Services (DHS), the Commonwealth Department of Immigration and Border Protection (DIBP) and the Australian Taxation Office (ATO) for specified purposes.

New section 50 prescribes the Commonwealth Department of Human Services (incorporating Centrelink) (DHS), the Commonwealth Department of Immigration and Border Protection (DIBP) and the Commissioner of Taxation within the Australian Taxation Office (ATO), as entities entitled to the following relevant protected information about a detainee: the detainee's full name, and any other name by which the detainee is, or has previously been, known; the detainee's date of birth; the address or area where the detainee lived before being detained; the name of the correctional centre where the detainee is being detained; the detainee's offender identification number; the date the detainee's detention started; and the date the detainee's detention is expected to end.

New section 50 also specifies additional protected information that each Commonwealth department is entitled to obtain, relevant to their legislative responsibilities.

DHS, as the Commonwealth department responsible for administering social services legislation (defined as the *Child Support (Assessment) Act 1989*, the *Child Support (Registration and Collection) Act 1988* and the *Social Security Act 1991*), is further prescribed to receive information outlining: a detainee's Centrelink card number; the type of Commonwealth payment or allowance a detainee received before the detainee's detention started; for a detainee who is under 19 years old, the name of the person who received a Commonwealth payment or allowance relating to the detainee before the detainee's detention started; and the balance of a detainee's trust account held under section 84 of the Act (Trust accounts for detainees). This information can be provided if reasonably necessary to ensure the proper care or housing of a person who is likely to be provided with services by DHS or to decide the detainee's eligibility to receive a Commonwealth payment or allowance.

New section 50 also prescribes the DIBP as the Commonwealth department responsible for administering the *Migration Act 1958*, as entitled to obtain a detainee's visa grant number or visa evidence number if the information is reasonably necessary for the purpose of deciding whether the detainee is eligible to remain in Australia.

Lastly, new section 50 prescribes the ATO, through the Commissioner for Taxation established under section 4 of the *Taxation Administration Act 1953*, as entitled to the following information: a detainee's tax file number; and the following information relating to a return lodged by a detainee, or the detainee's liability to pay tax, in a financial year during the detainee's detention: income earned by a detainee in the financial year; and any other information relevant to the detainee's liability to pay tax. The information must be reasonably necessary to assess the detainee's liability to pay tax.