

Australian Capital Territory

Corrections Management (Prisoner Discipline) Procedure 2007*

Notifiable instrument NI2007-459

made under the

Corrections Management Act 2007, section 14(1) (Corrections policies and operating procedures)

1 Name of instrument

This instrument is the *Corrections Management (Prisoner Discipline) Procedure 2007*.

2 Commencement

This instrument commences on the day after it is notified.

3 Policies and operating procedures

Under section 14 of the *Corrections Management Act 2007* (the Act), I make the

PRISONER DISCIPLINE PROCEDURE

in Schedule 1 to this instrument, to facilitate the effective and efficient management of correctional services.

James Ryan
Executive Director
ACT Corrective Services
17 December 2007

*Name amended under Legislation Act, s 60



**Belconnen Remand Centre (BRC)
Symonston Temporary Remand Centre (STRC)**

PRISONER DISCIPLINE PROCEDURE

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Purpose

To detail the process for dealing with disciplinary breaches and allegations of disciplinary breaches.

Authority

Legislation

Corrections Management Act 2007, chapter 10 and 11.

Scope

The process commences when a disciplinary breach is identified and ends when the matter is finalised by way of disciplinary action or no disciplinary action.

Procedure

1 Commencing a disciplinary process

Step	Action	Responsibility
<u>1</u>	Determine whether there has been a breach of discipline.	CO1
<u>2</u>	Counsel and/or warn and/or reprimand the prisoner.	CO1
<u>3</u>	If after counselling, warning and/ or reprimanding the prisoner it is considered that no further action is required, make a case note on JOIST.	CO1
4	Take no further action if appropriate.	CO1
<u>5</u>	Secure the prisoners and, if required, notify the CO2 immediately if it is believed that <u>investigative segregation</u> is necessary for the alleged breach.	CO1
<u>6</u>	If it is believed on reasonable grounds that a breach of discipline has been committed requiring further action, complete an 'application for disciplinary investigation report'.	CO1

7	Give the 'application for disciplinary investigation report' to the CO2 in charge (investigator) before the end of the shift.	CO1
8	Make a case note.	CO1

Step 1

Disciplinary breaches within the AMC can range from very minor situations to moderate to very serious breaches of discipline.

Each situation below has an indication of whether the situation must be reported (mandatory) or may be reported (optional).

'Optional' reporting indicates that after warning, reprimanding or counselling a prisoner it may be decided that no further action is required. In this situation, a case note needs to be made on JOIST but an 'application for disciplinary investigation report' is not required. It may be determined, depending on the situation, that a report is required.

If there are a number of case notes on the prisoner in relation to disciplinary breaches consult the CO2 and seek advice on whether a report should be made.

'Mandatory' reporting means that an 'application for disciplinary investigation report' must be completed and given to the investigator.

The following situations listed below constitute a disciplinary breach:

Situation	Report required?
a) contravening a direction given to the prisoner by the chief executive or a Corrections Officer under this Act or the <i>Crimes (Sentence Administration) Act 2005</i> ;	Optional
b) being in a prohibited area, without the chief executive's approval;	Optional
c) smoking in a non-smoking area at a correctional centre;	Optional
d) taking (in any way) alcohol or a drug into the prisoner's body;	Mandatory
e) providing a positive test sample for alcohol or a drug when directed, under this Act or the <i>Crimes (Sentence Administration) Act 2005</i> , to provide a test sample;	Mandatory
f) making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the Superintendent's approval;	Mandatory
g) gambling;	Optional
h) being disrespectful or abusive towards a Corrections Officer in a way that undermines the officer's authority;	Optional
i) being disrespectful or abusive towards someone in a way that is likely to provoke a person to be violent;	Optional
j) intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the prisoner or anyone else;	Mandatory
k) fighting;	Mandatory
l) assaulting someone else;	Mandatory

m) theft;	Optional
n) possessing stolen property;	Optional
o) possessing or dealing in things without the Superintendent's approval;	Mandatory
p) intentionally or recklessly damaging or destroying property belonging to someone else;	Mandatory
q) interfering with property belonging to someone else, without approval by the owner of the property;	Mandatory
r) interfering with anyone's personal monitoring device without the chief executive's approval;	Mandatory
s) creating or participating in a disturbance, or other activity, likely to endanger security or good order at a correctional centre;	Mandatory
t) contravening a condition of any of the following: i) a direction under section 204 (Local leave directions); ii) a local leave permit; iii) an interstate leave permit;	Mandatory
u) doing anything for the purpose of escaping, or assisting a prisoner to escape, from detention;	Mandatory
v) offering, giving or taking a bribe;	Mandatory
w) attempting, or assisting anyone else attempting, to commit another disciplinary breach;	Mandatory
x) threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (s);	Mandatory
y) anything else prescribed by regulation.	Mandatory

Step 2

If it is determined that the prisoner has committed a disciplinary breach, then **one or more** of the following actions may be taken if appropriate:

- a) counsel and/ or warn the prisoner about committing a disciplinary breach;
- b) reprimand the prisoner;
- c) direct that the prisoner be segregated from other prisoners only on the basis of investigative segregation (see table 4 below);

Make a case note.

If it is determined that the breach warrants further action, give the CO2 in charge (investigator) an 'application for disciplinary investigation report'.

Step 3

For those disciplinary breaches listed as '**no report required**', it may be decided that after counselling, warning and/ or reprimanding that no further action is required.

If no further action is taken, make a case note on JOIST.

Step 5

The first responding officer should secure the prisoner (s) involved in their cell/ accommodation.

If investigative segregation is considered appropriate, it may require the relocation of the prisoner.

Step 6

If an ‘application for disciplinary investigation report’ is provided, it must be given to the CO2 in charge (investigator) as soon as practicable, this must be no later than the end of the shift. The report must include:

- details of the alleged disciplinary breach;
- the reasons for believing the prisoner has committed the disciplinary breach;
- a recommendation about investigative segregation;

2 Functions of the CO2 (Investigator) in the disciplinary process

Step	Action	Responsibility
<u>1</u>	Consider the ‘application for disciplinary investigation report’ and make any investigation deemed appropriate.	CO2 (investigator)
<u>2</u>	If appropriate, take no further action, counsel, warn, reprimand the prisoner and/ or report the breach to the CO3 (administrator) (investigator’s report).	CO2 (investigator)
3	Make a case note	CO2 (investigator)
<u>4</u>	Refer the matter to the chief police officer if appropriate and after consultation with a CO3.	CO2 (investigator)
<u>5</u>	Put the prisoner in investigative segregation if appropriate.	CO2 (investigator)
<u>6</u>	If it is believed on reasonable grounds that a breach of discipline has been committed requiring further action, complete an ‘investigator’s report’ by the end of the shift.	CO2 (investigator)
7	Give the ‘investigator’s report’ and a copy of the ‘application for disciplinary investigation report’ to the CO3 (administrator) as soon as practicable.	CO2 (investigator)

Step 1

NB An investigator in most situations should be the CO2 in charge unless otherwise specified by the Superintendent. The Superintendent may allocate a person other than a Corrections Officer (i.e Business, Policy and Coordination officer) to exercise the functions of the investigator.

The CO2 (investigator) must consider the ‘application for disciplinary investigation report’ and make any investigation considered appropriate.

Step 2

The CO2 (investigator) can do **one or more** of the following actions:

- a) take no further action in relation to the report;
- b) counsel and/ or warn the prisoner about committing a disciplinary breach;
- c) reprimand the prisoner.

If any of the above actions is taken, make a case note.

If it is determined that the breach warrants further action, give the CO3 (administrator) an ‘investigator’s report’ accompanied with the ‘application for disciplinary investigation report’.

Step 4

A decision to refer a breach to the chief police officer must be made in consultation with the CO3.

The referral must be made in writing and accompanied by the investigator’s report. Determining whether a matter should be referred to the chief police officer depends on whether the disciplinary breach is also a criminal offence against a territory law. The criteria includes considering factors such as:

- (a) the classification of the offence under relevant laws;
- (b) the nature of the offence; and
- (c) the severity of the punishment.

It is possible for both a criminal and disciplinary process to commence over the same breach. If this occurs, the following rules apply in relation to whether a disciplinary process must stop or continue if a criminal process is commenced:

- (a) a criminal prosecution cannot commence or continue if disciplinary action has been taken to address the behaviour, incident or act.
- (b) disciplinary process cannot commence or continue if a criminal prosecution has commenced.
- (c) disciplinary action cannot be imposed upon a prisoner if the prisoner has been convicted or found guilty of a criminal offence relating to the same behaviour, incident or act.
- (d) if a criminal prosecution acquits a prisoner on a criminal charge, a disciplinary process may begin or continue for the same behaviour, incident or act.

Step 5

Refer to procedure on investigative segregation.

Step 6

If it is decided after considering the ‘application for disciplinary investigation report’ and making any investigation considered appropriate that a disciplinary action should be taken in relation to the alleged disciplinary breach, complete an ‘investigator’s report’.

The ‘investigator’s report’ must include:

- the ‘application for disciplinary investigation report’;
- details of any referral to the chief police officer;
- if the prisoner has been put in investigative segregation:
 - the details of the segregation applied
 - reasons for the direction and
 - a recommendation about the prisoner’s segregation.
- A recommendation about the disciplinary action to be imposed.

3 Functions of the CO3 (Administrator) in the disciplinary process

Step	Action	Responsibility
<u>1</u>	Consider the ‘investigator’s report’ and the ‘application	CO3

	for disciplinary investigation report' and make any investigation deemed appropriate.	(Administrator)
<u>2</u>	If appropriate, take no further action, counsel, warn and/ or reprimand the prisoner.	CO3 (Administrator)
3	Make a case note	
<u>4</u>	Consider whether the matter should be referred to the chief police officer or the department of public prosecutions if it has not already been done.	CO3 (Administrator)
<u>5</u>	Assess any directions that have been made to put the prisoner in investigative segregation.	
<u>6</u>	Determine an appropriate disciplinary charge.	CO3 (Administrator)
<u>7</u>	Issue a charge notice.	CO3 (Administrator)

Step 1

The CO3 (administrator) must consider the 'investigator's report' and the 'application for disciplinary investigation report' and make any further investigation considered appropriate to determine whether the breach warrants a disciplinary charge.

Step 2

If the CO3 (administrator) is given an investigator's report, then **one or more** of the following actions may be taken if appropriate:

- take no further action in relation to the report;
- counsel and/ or warn the prisoner about committing a disciplinary breach; and/ or
- reprimand the prisoner.

If any of the above actions is taken, make a case note.

If it is determined that the breach warrants the imposition of a disciplinary charge then a 'charge notice' must be issued to the prisoner.

Step 4

The CO4 (administrator) has the option of referring the matter to the chief of police or the Department of Public Prosecutions if it has not already been done.

The referral must be made in writing and accompanied by the investigator's report.

Determining whether a matter should be referred to the chief police officer depends on whether the disciplinary breach is also a criminal offence against a territory law.

The criteria includes considering factors such as:

- the classification of the offence under relevant laws;
- the nature of the offence; and
- the severity of the punishment.

It is possible for both a criminal and disciplinary process to commence over the same breach. If this occurs, the following rules apply in relation to whether a disciplinary process must stop or continue if a criminal process is commenced:

- a criminal prosecution cannot commence or continue if disciplinary action has been taken to address the behaviour, incident or act.
- disciplinary process cannot commence or continue if a criminal prosecution has commenced.
- disciplinary action cannot be imposed upon a prisoner if the prisoner has been convicted or found guilty of a criminal offence relating to the same behaviour, incident or act.
- if a criminal prosecution acquits a prisoner on a criminal charge, a disciplinary process may begin or continue for the same behaviour, incident or act.

Step 5

Refer to procedure on investigative segregation.

Step 6

Refer to procedure on determining an appropriate disciplinary charge against a prisoner.

Step 7

To charge a prisoner with a disciplinary breach, the CO3 must give the prisoner a 'charge notice' outlining:

- the disciplinary breach charged;
- a brief statement of the conduct to which the charge applies and when, or the period during which, it happened or is alleged to have happened.

The prisoner must have an opportunity to consent to the charge and to accept the disciplinary action proposed.

If the prisoner has admitted the breach, outline the charge that would be considered appropriate taking into account that the prisoner admitted the breach.

4 Disciplinary charge

Step	Action	Responsibility
<u>1</u>	Consider all of the documentation to determine whether the prisoner(s) should be charged for committing a disciplinary breach.	CO3 (Administrator)
<u>2</u>	If it is determined a charge should be imposed, refer to the 'penalty schedule' for guidance on an appropriate penalty.	CO3 (Administrator)
<u>3</u>	Record any disciplinary action taken against a prisoner in the prisoner discipline file.	CO3 (Administrator)
<u>4</u>	If separate confinement is imposed, ensure that the prisoner is examined by a doctor at the start and at the end of the separate confinement.	CO3 (Administrator)
<u>5</u>	Monitor the prisoner's condition daily if in separate confinement and record on the 'separate confinement sheet'.	CO1

Step 1

Any decision made by a CO3 to charge a prisoner with a disciplinary breach, must be made in consultation with the Superintendent.

The CO3 (administrator) must consider the 'investigator's report', the 'application for disciplinary investigation report' and any other supporting documentation and make any further investigation considered appropriate to determine whether the breach warrants a disciplinary charge.

The following factors may be relevant considerations in determining whether the prisoner should be charged with a disciplinary breach:

- the seriousness of the breach;
- whether the prisoner admitted the breach;
- whether it has, or is likely to have, an adverse effect on the good order of the facility or adversely affect the prisoner or other prisoners;
- whether the prisoner was observed by other prisoners or staff when committing the breach;
- whether the action was intentional or accidental;
- whether the commission of the breach created, or was likely to create, tension within the facility;
- the mood among other prisoners at the time of the breach;
- whether the prisoner was aware of the relevant rules;
- whether the prisoner's behavioural standards complied with the facility's requirements; and
- any other factor which in the opinion of the officer observing or becoming aware of the breach of discipline is relevant to the seriousness of the breach including past institutional performance of the prisoner.

Step 2

To provide guidance on whether the proposed disciplinary action is proportionate to the breach, refer to the 'penalty schedule'.

The following penalties (including a combination of these) may be imposed:

- A fine not exceeding \$500
- Withdrawal of privileges
A privilege is defined as any benefit a prisoner may have, material or otherwise, beyond the minimum entitlements set out in Chapter 6 of the *Corrections Management Act 2007*.

Example- a prisoner is not allowed to make a telephone call after the evening meal, participate in a hobby or recreation that is not part of their case management plan and not allowed to use the TV, radio or CD player.

The purchase of postage stamps and PIN Phone credits and the use of the telephone should not normally be forfeited unless the circumstances of the offence are directly related to their abuse.

- Requirement to perform extra work
- Separate confinement
Separate confinement may be imposed for the 3, 7, or 28 days.

- Reparation for loss suffered not exceeding \$100

It is noted however that the penalties will vary depending on the circumstances around the breach and are decided on a case-by-case basis.

Step 3

The record must include details of the following:

- the prisoner's name;
- the disciplinary breach;
- a brief statement of the conduct to which the disciplinary breach applies and when, or the period during which, it happened;
- the disciplinary action taken against the prisoner;
- details of any finding by a relevant CO3 (presiding officer) that a disciplinary breach is proven against the prisoner if the CO3 (presiding officer) decides not to take disciplinary action against the prisoner.

NB This record must be available for inspection by external bodies (i.e. Official visitor, Ombudsman, Human Rights Commissioner)

Step 4

A doctor must examine the prisoner as soon as practicable at the start and at the end of the separate confinement.

Step 5

A prisoner in separate confinement must be checked on at least once daily. This check must be recorded on the separate confinement sheet.

5 Disciplinary action (admitted breach)

Step	Action	Responsibility
1	Give the 'charge notice' to the prisoner and ask whether they accept the charge in the 'charge notice' and the proposed disciplinary action.	Administrator (CO3)
<u>2</u>	Obtain a written notice from the prisoner stipulating that they accept the charge as stated in the charge notice.	Administrator (CO3)
<u>3</u>	Give the accused written notice of the decision made to take the disciplinary action stated in the 'charge notice'.	Presiding officer (CO3)
<u>4</u>	Take disciplinary action against the prisoner as stipulated in the charge notice.	Presiding officer (CO3)

Step 2

If the prisoner admits the disciplinary breach charged and accepts the proposed disciplinary action stated in the charge notice, ensure that the prisoner writes this on the 'charge notice'.

The prisoner must fill out the charge notice no later than the day after the CO3 (administrator) hands it to the prisoner.

The CO3 (administrator) can extend the period allowed to make the election if it is appropriate.

If this power is exercised, the CO3 (administrator) must notify the prisoner in writing.

Step 3

The CO3 (presiding officer) who actions the charge stated in the ‘charge notice’ must not have had any involvement with the relevant disciplinary breach with respect to reporting and charging the prisoner.

Step 4

The CO3 (presiding officer) must only take disciplinary action as stipulated in the ‘charge notice’.

6 Disciplinary action and review (contested breach)

Step	Action	Responsibility
<u>1</u>	Allocate a presiding officer	Superintendent
<u>2</u>	Create a prisoner disciplinary file.	CO3 (Presiding officer)
<u>3</u>	Conduct an inquiry into the disciplinary breach charged.	CO3 (Presiding officer)
<u>4</u>	Refer the allegation to the chief police officer or the director of public prosecutions if appropriate and if it has not already been done.	CO3 (Presiding officer)
<u>5</u>	Provide the accused with written notice of the decision.	CO3 (Presiding officer)

Step 1

If the prisoner does not consent to what they have been charged with in the charge notice then the matter must be referred to a CO3 (presiding officer).

The Superintendent must assign a CO3 (presiding officer) who has not had any involvement with the relevant disciplinary breach with respect to reporting and charging the prisoner.

Step 2

All inquiries into alleged disciplinary breaches should be recorded on a file. The file should include copies of the:

- Disciplinary breach report;
- Any relevant case notes from JOIST;
- Investigator’s report;
- Investigative segregation forms (if any); and
- Charge Notice.

Step 3

Refer to procedure on conducting an inquiry.

After conducting an inquiry, the CO3 (presiding officer) must determine whether charges are proven or not proven on the balance of probabilities (proving a fact on the

standard of the balance of probabilities means that the existence of the fact is more probable than not).

The CO3 can:

- impose disciplinary action if the charges are proven;
- dismiss the charge if the evidence does not prove the prisoner committed a breach on the basis of the balance of probabilities; or
- if there are other reasonable grounds to dismiss the charge, and it would be appropriate to do so, the CO3 (presiding officer) must dismiss the charges.

Step 4

The CO4 (administrator) has the option of referring the matter to the chief of police or the Department of Public Prosecutions if it has not already been done.

The referral must be made in writing and accompanied by the investigator's report.

Determining whether a matter should be referred to the chief police officer depends on whether the disciplinary breach is also a criminal offence against a territory law.

The criteria includes considering factors such as:

- the classification of the offence under relevant laws;
- the nature of the offence; and
- the severity of the punishment.

It is possible for both a criminal and disciplinary process to commence over the same breach. If this occurs, the following rules apply in relation to whether a disciplinary process must stop or continue if a criminal process is commenced:

- a criminal prosecution cannot commence or continue if disciplinary action has been taken to address the behaviour, incident or act.
- disciplinary process cannot commence or continue if a criminal prosecution has commenced.
- disciplinary action cannot be imposed upon a prisoner if the prisoner has been convicted or found guilty of a criminal offence relating to the same behaviour, incident or act.
- if a criminal prosecution acquits a prisoner on a criminal charge, a disciplinary process may begin or continue for the same behaviour, incident or act.

Step 5

The CO3 (presiding officer) must give prompt written notice to the prisoner of the decision including:

- a statement of the reasons for the decision;
- information about the availability of a review of the decision; and
- reasons for referring the matter to criminal justice agencies (i.e AFP, DPP, if applicable).

A prisoner has the opportunity to have the decision reviewed by a CO4 (review officer) by making an application no later than 7 days after being given the notice by the CO3.

NB the making of the application by the prisoner does not affect the taking of disciplinary action under the decision under review.

7 Application by prisoner to review the CO3's (presiding officer) decision

Step	Action	Responsibility
<u>1</u>	Allocate a review officer	Superintendent
<u>2</u>	Review the prisoner disciplinary inquiry file.	CO4 (Review officer)
<u>3</u>	Conduct an inquiry into the disciplinary breach charged.	CO4 (Review officer)
<u>4</u>	Provide the accused with written notice of the decision.	CO4 (Review officer)
<u>5</u>	If the prisoner wishes to apply to the magistrate (adjudicator) for a review of the decision, ensure that the application is forwarded to the magistrate as soon as practicable.	CO4 (Review officer)

Step 1

The Superintendent can assign one to two or more review officers, depending on the gravity of the alleged disciplinary breach.

The review officer must be a Corrections Officer as defined under s19 under the CMA 2007. In most cases it will be the Deputy Superintendent, and/ or the SOG A/ B of Business, Policy and Coordination (if deemed a Corrections Officer under the *Corrections Management Act 2007*).

The Superintendent must assign a review officer(s) who have not had any involvement with the relevant disciplinary breach with respect to reporting, charging the prisoner or conducting an inquiry into the relevant breach.

Step 2

Obtain and review the prisoner disciplinary inquiry file.

Step 3

The CO4 (review officer) must conduct a further inquiry to review the CO3's (presiding officer's) decision.

After conducting an inquiry the CO4 (review officer) can:

- confirm the original decision;
- vary the decision; or
- set aside the decision and make a new decision.

Step 4

The review officer(s) must give prompt written notice to the prisoner of the decision including:

- a statement of the reasons for the decision; and
- information about the availability of a review of the decision.

A prisoner has the opportunity to have the decision reviewed by a magistrate (adjudicator) by making an application no later than 7 days after being given the notice by the CO4 (review officer).

Step 5

A magistrate (adjudicator) can further review a decision made by the CO4 (review officer) when asked by a prisoner.

The prisoner must make an application no later than 7 days after the day the prisoner is informed of the decision.

NB the making of the application by the prisoner does not affect the taking of disciplinary action under the decision under review.

8 Investigative segregation

Step	Action	Responsibility
<u>1</u>	Decide whether to place a prisoner (s) under investigative segregation.	CO2 (investigator), CO3 (administrator)
<u>2</u>	Complete the 'investigative segregation' form.	CO2 (investigator), CO3 (administrator)
3	Give a copy of the 'investigative segregation' form to the prisoner.	CO2 (investigator), CO3 (administrator)
<u>4</u>	Review the investigative segregation order if it remains in force at least once every 7 days and/ or upon the request of the prisoner.	CO4
5	Remove the prisoner from investigative segregation on either of the days depending on which one comes earlier: <ul style="list-style-type: none"> • 7th day after the day the direction is given; or • the day the administrator (CO3) makes a decision in relation to the alleged disciplinary breach. 	CO2 (investigator), CO3 (administrator)
<u>6</u>	If a prisoner wishes to make an application to the magistrate for a review of the decision for investigative segregation, forward the application to the magistrate (adjudicator) as soon as practicable.	CO3 (administrator)

Step 1

A decision to direct investigative segregation of a prisoner must be made in consultation with a CO4.

Investigative segregation should only be used to enable the temporary separation of prisoners during an investigation to ensure that witnesses and victims of any breach are protected and the reliability of the investigation is upheld.

The first responding officers or CO1s may segregate prisoners for good order and management of the centre after an incident. This is not deemed investigative segregation.

The decision to put a prisoner(s) in investigative segregation may require the relocation of the prisoner (s) in the correctional centre.

A direction for investigative segregation may be made if it is believed, on reasonable grounds, that the opportunity for the prisoner to associate with anyone else creates, or is likely to create, a risk of:

- harm, or threatened harm, to the prisoner or anyone else; or
- the perverting, or attempted perverting, of an investigation, or
- undermining security or good order at a correctional centre.

Step 2

If a direction for investigative segregation is made, give the prisoner prompt notice by providing him/ her with a copy of the 'investigative segregation' form.

The 'investigative segregation' form must include:

- why it was given;
- when it takes effect; and
- what triggers the finish of a segregation and how the decision is reviewed.

Step 4

The CO4 must review a decision about investigative segregation at least once every seven (7) days while it remains in force.

The CO4 must review a decision about investigative segregation if the prisoner requests.

After reviewing a direction for investigative segregation, the CO4 may:

- confirm the direction; or
- make a further direction; or
- revoke the direction if it is believed that the direction is no longer necessary or prudent.

Step 6

A magistrate (adjudicator) can further review a decision to put a prisoner under investigative segregation when asked by a prisoner.

The prisoner must make an application no later than 7 days after the day the prisoner is informed of the direction for investigative segregation.

NB The direction for the investigative segregation of a prisoner is not affected by a prisoner's application to a magistrate (adjudicator) for review until the magistrate makes a decision.

9 Conducting an inquiry

Step	Action	Responsibility
<u>1</u>	Create a prisoner disciplinary inquiry file.	Officer conducting an inquiry
<u>2</u>	Provide written notice of the inquiry to the accused.	Officer conducting an inquiry
<u>3</u>	Consider any submissions provided by the accused.	Officer conducting an inquiry
<u>4</u>	Conduct the inquiry	Officer conducting an inquiry
<u>5</u>	Decide whether to hold a hearing for the inquiry. If so, conduct hearing as per Part 11.3 of the CMA.	Officer conducting an inquiry
<u>6</u>	Provide written notice to persons identified as needing to provide a formal written report about the accused.	Officer conducting an inquiry
<u>7</u>	Provide written notice to persons identified as needing to provide stated information and/ or documents relevant to the inquiry.	Officer conducting an inquiry

Step 1

The following people may conduct an inquiry:

- CO3 (presiding officer); and/or
- CO4 (review officer).

If a decision is being reviewed externally, a magistrate (adjudicator) may conduct an inquiry as part of the review of the decision.

All inquiries into alleged disciplinary breaches should be recorded on a file. The file should include copies of the:

- Disciplinary Breach Report
- Investigator's Report; and
- Charge Notice.

A written record of the proceedings at the inquiry must also be kept.

Step 2

Issue a notice of inquiry to the prisoner. The notice must include:

- a statement about where and when the inquiry is to start;
- details of the disciplinary charge or disciplinary action to which the inquiry relates;
- the closing date for the accused to give the presiding officer submissions to the inquiry; and
- a statement to the effect that a hearing may be conducted for the inquiry.

Step 3

Give the prisoner an opportunity to make submissions.

Submission can be in any form acceptable to the officer conducting the inquiry (i.e. audio, written).

Consider any submissions provided by the prisoner prior to any deadline set in the notice of inquiry form.

Step 4

The inquiry must:

- be an administrative process requiring the application of natural justice to the prisoner;
- be a decision determined on the balance of probabilities.
- be conducted with as little formality and technicality as possible;
- not open to the public, unless decided otherwise; and
- allow for a hearing or the inquiry if appropriate (refer to step 5).

Step 5

If it is decided that a hearing should be held, the Corrections Officer conducting the inquiry must issue a hearing notice to:

- the accused to whom the inquiry relates; and
- the chief executive.

The prisoner accused of breaching discipline is entitled to be present at the hearing.

Step 6

As part of the inquiry process, the officer conducting the inquiry can seek reports from any of the following:

- the chief executive;
- the NSW corrections authority;
- the Director of Public Prosecutions;
- another Corrections Officer or a public servant of the ACT.

The person asked for a report must provide a report.

A request for a report must be made in writing.

Step 7

The Corrections Officer conducting the inquiry can ask for particular information or particular documents from people with a relevant connection to the alleged disciplinary breach being decided.

The request for information or documents must be made in writing.

Forms/Templates

Disciplinary Breach Report

Investigator's Report

Investigative Segregation Form

Charge Notice

Notice of Inquiry

Hearing Notice

Separate Confinement Sheet

Related policies and procedures

Prisoner Discipline Policy