

Australian Capital Territory

# Corrections Management (Detainee Discipline – Hearings) Operating Procedure 2022

Notifiable instrument NI2022-37

made under the

Corrections Management Act 2007, s14 (Corrections policies and operating procedures)

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## 1 Name of instrument

This instrument is the *Corrections Management (Detainee Discipline – Hearings) Operating Procedure 2022*.

## 2 Commencement

This instrument commences on the day after its notification day.

## 3 Operating Procedure

I make this operating procedure to facilitate the effective and efficient management of correctional services.

Ray Johnson APM  
Commissioner  
ACT Corrective Services  
28 January 2022



<b>OPERATING PROCEDURE</b>	<b>Detainee Discipline – Hearings</b>
<b>OPERATING PROCEDURE NO.</b>	<b>D11.2</b>
<b>SCOPE</b>	<b>Alexander Maconochie Centre</b>

## PURPOSE

To provide instructions to staff on formally hearing a detainee's disciplinary charge/s, and the process by which a detainee may appeal the outcome of a hearing.

## DEFINITIONS

### Investigating Officer

The ACTCS staff member responsible for investigating alleged breaches of discipline.

### Presiding Officer

The officer responsible for reviewing *Breach of Discipline* reports and the Investigating Officer's Report and determining whether to lay a charge for the alleged disciplinary breach or take other action.

The officer responsible for presiding and determining outcomes at a disciplinary hearing.

The Presiding Officer laying a charge must not be the same officer as the Presiding Officer for the hearing.

## PROCEDURES

### 1. Hearing

- 1.1. A disciplinary hearing must be commenced within five (5) business days from the issuing of a *D11.F2: Charge Notice*. The date and time of the hearing must be included in the *D11.F2: Charge Notice*.
- 1.2. The Investigating Officer must provide the *D11.F3: Investigating Officer's Report* and relevant material to the second Presiding Officer prior to any hearing. The second Presiding Officer may direct the Investigating Officer to make additional investigations as required.
- 1.3. The second Presiding Officer must determine whether any witnesses or reports are required prior to the hearing and direct the Investigating Officer to give written notice to request a person to attend as a witness or provide relevant information.
- 1.4. The second Presiding Officer must determine whether the detainee may need supports or advice during the hearing, including:
  - a. where a detainee has disability, language or comprehension difficulties
  - b. ensuring the Investigating Officer notifies the Aboriginal and Torres Strait Islander Unit that an Aboriginal and Torres Strait Islander detainee may require support

- c. where the second Presiding Officer has concerns about a detainee's physical or mental health.
- 1.5. On the morning of the hearing the Investigating Officer must provide the Programs Officer with the approximate time a hearing is scheduled, and a list of all detainees and support persons required to attend.
- 1.6. Hearings will take place in the High-Risk Assessment Team room in the Programs Building unless the General Manager nominates another location.
- 1.7. Once the hearing room has been prepared and the second Presiding Officer and other stakeholders are present, the Programs Officer must advise the relevant unit to arrange for the detainee to attend.
- 1.8. If a detainee refuses to attend the hearing, the second Presiding Officer may proceed with the hearing in the detainee's absence.
- 1.9. The second Presiding Officer must record the outcome on the D11.F5: Hearing Result and direct the Investigating Officer to provide a hard copy and via email to the detainee within 24 hours of the hearing.
- 1.10. The Unit Officer must case note that the detainee has refused to attend the hearing.
- 1.11. When the detainee is present for the hearing, the detainee must be asked to sit at a table opposite the second Presiding Officer with two correctional officers present. The two correctional officers must not have been involved in the incident.
- 1.12. Once the hearing commences the second Presiding Officer must:
  - a. confirm the identity of the detainee
  - b. read the charge/s to the detainee and ensure the detainee understands the charge/s
  - c. confirm the detainee understands the disciplinary process and, if not, explain it
  - d. confirm the detainee received the D11.F2: Charge Notice within the appropriate timeframe
  - e. ask the detainee whether they admit to the charge/s
  - f. ask the detainee whether they have prepared a written statement on the D11.F7: Detainee Statement
  - g. ask the detainee if they would like to call any witnesses, and how the information the witness will provide relates to the charge/s.
- 1.13. The detainee retains the privilege against self-incrimination and the right to remain silent and the second Presiding Officer must not force a detainee to answer questions which may incriminate them.
- 1.14. Where a detainee remains silent or does not provide an adequate response to the question in section 1.9 (e) the second Presiding Officer must record that the detainee contests the charge/s.

- 1.15. If the detainee admits to the charge/s the second Presiding Officer must either:
  - a. reprimand or warn the detainee or
  - b. issue the detainee with an appropriate and proportionate administrative penalty or a combination of penalties
  - c. record the outcome on the D11.F5: Hearing Result and
  - d. close the formal hearing.
- 1.16. If the detainee does not admit to the charge/s the second Presiding Officer must ask the Investigating Officer to provide all information relevant to the charge/s. The second Presiding Officer must cross reference this with the D11.F7: Detainee Statement. The second Presiding Officer may call the reporting officer/s and any other relevant person to answer questions related to the charge/s.
- 1.17. The second Presiding Officer may direct that the detainee be removed from the hearing if the detainee:
  - a. unreasonably interrupts, interferes, or obstructs the hearing or
  - b. contravenes a reasonable direction of the second Presiding Officer about their conduct in the hearing.
- 1.18. If the second Presiding Officer directs the detainee to be removed from the hearing, the second Presiding Officer must provide the detainee with a D11.F9: Hearing Exclusion form excluding them for the remainder of the hearing.
- 1.19. Based on the evidence presented, the second Presiding Officer must decide whether the charge/s is proven on the balance of probabilities or not, and:
  - a. dismiss the charge/s
  - b. issue the detainee with an appropriate and proportionate administrative penalty or a combination of penalties
  - c. record the outcome on the D11.F5: Hearing Result
  - d. make a comprehensive record of the hearing in the D11.F4: Hearing Report including clear reasons for their decision.
- 1.20. The second Presiding Officer must send the D11.F4: Hearing Report to the Investigating Officer.
- 1.21. The Investigating Officer must print a copy of the D11.F4: Hearing Report and provide it to the detainee within 24 hours of the hearing.
- 1.22. Where the charge/s is found to be proven, the detainee must also be provided with a D11.F6: Hearing Review form.

## **2. Adjournment**

- 2.1. The second Presiding Officer may adjourn the hearing for the following reasons:
  - a. the second Presiding Officer has concerns about the detainee's physical or mental health at the time of the hearing

- b. it is not possible to complete the hearing for any reason (detainee is attending court, AMC's operational requirements, etc.)
  - c. a witness is not available to attend
  - d. the detainee's legal representation is not available to attend
  - e. an appropriate support person is not available for a detainee that has a disability, language or comprehension difficulties
  - f. an Aboriginal Liaison Officer is not available to support an Aboriginal and Torres Strait Islander detainee.
- 2.2. Where the second Presiding Officer has adjourned the hearing, the Investigating Officer must determine the next date for the hearing and provide the detainee with an updated D11.F2: Charge Notice.
- 2.3. Where a charge has been open for six weeks from the initial hearing and the delay has not been the fault of the detainee, the Presiding Officer must consider whether natural justice and procedural fairness is being met, and
- a. dismiss the charge or
  - b. continue the charge and record the reasons for the decision in the D11.F4: Hearing Report.

### **3. Witnesses**

- 3.1. The second Presiding Officer may call the reporting officer and any other relevant person to answer questions relating to the charge where it is being contested by the detainee. Witnesses should not be present to hear evidence of other witnesses during the hearing.
- 3.2. The detainee may ask questions of witnesses.
- 3.3. The second Presiding Officer may dismiss any question or statement from the detainee if they believe it is:
- a. unfair, unduly prejudicial or vexatious or
  - b. involves an abuse of the disciplinary process.

### **4. Legal representation**

- 4.1. The second Presiding Officer may consent to a detainee having legal representation in accordance with the Corrections Management Act 2007 (ACT) and the considerations in section 8.26 of the Detainee Discipline Policy, in particular if:
- a. the charge is particularly serious or complex
  - b. the detainee would not be able to understand or participate effectively in the hearing without legal representation.
- 4.2. Where a detainee has been permitted legal representation, access to information by the legal representative must be limited to the same as an unrepresented detainee.

- 4.3. Where the availability of a legal representative is causing significant delay, the second Presiding Officer may proceed with the hearing to ensure the disciplinary charge is resolved in a timely manner, if this is consistent with natural justice.

## **5. Review of Decision**

### **Internal review**

- 5.1. A detainee may request the General Manager to review the hearing outcome by completing a *D11.F6: Hearing Review* form and submitting it to a correctional officer within seven days of the detainee receiving the *D11.F4: Hearing Report*.
- 5.2. The correctional officer must provide the *D11.F6: Hearing Review* form to the Area Supervisor as soon as practicable.
- 5.3. The Area Supervisor must email the *D11.F6: Hearing Review* form to [AMCdiscipline@act.gov.au](mailto:AMCdiscipline@act.gov.au) by close of business on the same day the form was submitted.
- 5.4. The Investigating Officer must provide all relevant documents and evidence to the General Manager within one business day. The Investigating Officer must reflect this action in the Discipline Log.
- 5.5. The General Manager must complete the review of the hearing within 14 days of receiving the *D11.F6: Hearing Review* form.
- 5.6. The General Manager must ensure the detainee is given notice of the outcome of the review.
- 5.7. The Investigating Officer must record the outcome of the review in the Discipline Log.

### **External Review**

- 5.8. Where the General Manager has reviewed the disciplinary decision and the detainee wishes to appeal the decision, they can do so by completing another *D11.F6: Hearing Review* form for review by an external adjudicator and submit it to a correctional officer within seven days of receiving notice of the outcome of the General Manager's review.
- 5.9. The correctional officer must provide the *D11.F6: Hearing Review* form to the Area Supervisor as soon as practicable.
- 5.10. The Area Supervisor must email the *D11.F6: Hearing Review* form to [AMCdiscipline@act.gov.au](mailto:AMCdiscipline@act.gov.au) by close of business on the same day the form was submitted.
- 5.11. The Investigating Officer must send the *D11.F6: Hearing Review* form to the Director, Office of the Commissioner, and record this in the Discipline Log.
- 5.12. The Director, Office of the Commissioner, must ensure that all relevant material and records relating to the disciplinary decision are provided to the external adjudicator.

## **RELATED DOCUMENTS AND FORMS**

- Detainee Discipline Policy
- Detainee Discipline – Laying a charge Operating Procedure

- Detainee Discipline – Penalties Operating Procedure
- D11.F1: Breach of Discipline
- D11.F2: Charge Notice
- D11.F3: Investigating Officer’s Report
- D11.F4: Hearing Report
- D11.F5: Hearing result
- D11.F6: Hearing Review
- D11.F7: Detainee Statement
- D11.F8: Notice of Incident Referral
- D11.F9: Hearing Exclusion
- A2.F1: Incident Report Form

Corinne Justason  
 Deputy Commissioner Custodial Operations  
 ACT Corrective Services  
 28 January 2022

**Document details**

Criteria	Details
Document title:	<i>Corrections Management (Detainee Discipline - Hearings) Operating Procedure 2022</i>
Document owner/approver:	Deputy Commissioner Custodial Operations, ACT Corrective Services
Date effective:	The day after the notification date
Review date:	3 years after the notification date
Responsible Officer:	Senior Director Operations
Compliance:	This operating procedure reflects the requirements of the <i>Corrections Management (Policy Framework) Policy 2020</i>

Version Control			
Version no.	Date	Description	Author
V1	September 2021	First Issued	S Leedham