

Australian Capital Territory

Corrections Management (Detainee Discipline) Policy 2022

Notifiable instrument NI2022-38

made under the

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

1 Name of instrument

This instrument is the *Corrections Management (Detainee Discipline) Policy 2022*.

2 Commencement

This instrument commences on the day after its notification day.

3 Policy

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

4 Revocation

This policy revokes the *Corrections Management (Detainee Disciplinary) Policy 2012* [NI2012-627].

Ray Johnson APM
Commissioner
ACT Corrective Services
28 January 2022

DETAINEE DISCIPLINE

POLICY NO. D11

ACT CORRECTIVE SERVICES



ACT
Government

Justice and Community Safety

Contents

1	PURPOSE	4
2	SCOPE	4
3	DEFINITIONS	4
4	PRINCIPLES	5
5	MANAGEMENT OF THE DISCIPLINARY PROCESS	6
6	BREACHES OF DISCIPLINE	8
7	INVESTIGATION AND CHARGE	10
8	DISCIPLINARY HEARINGS	12
9	ADMINISTRATIVE PENALTIES	15
10	REVIEW OF DECISIONS.....	17
11	RECORDS	18
12	RELATED DOCUMENTS	19

1 PURPOSE

ACT Corrective Services (ACTCS) is committed to ensuring that disciplinary processes are conducted in accordance with principles of natural justice and procedural fairness to uphold safety, security and good order at a correctional centre. Detainees are involved in the disciplinary process and have the opportunity to make submissions to the decision-maker.

This policy establishes a proportionate, fair and transparent process for the management of detainee discipline in a correctional centre in accordance with the Corrections Management Act 2007 (ACT) and consistently with the Human Rights Act 2004 (ACT).

2 SCOPE

This policy applies to all correctional centres in the ACT.

The Deputy Commissioner Custodial Operations may establish operational procedures under this policy.

3 DEFINITIONS

Administrative penalty	An administrative penalty applied as disciplinary action for a breach of discipline in accordance with sections 184-186 of the <u>Corrections Management Act 2007 (ACT)</u> .
Correctional Officer	A correctional officer appointed under section 19 of the <u>Corrections Management Act 2007 (ACT)</u> and appointed under the <u>ACTPS Correctional Officers Enterprise Agreement</u> .
Investigating Officer	A staff member as defined at section 153 of the <u>Corrections Management Act 2007 (ACT)</u> and appointed under section 5.3 of this policy to investigate alleged breaches of discipline.
Presiding Officer	<p>A correctional officer as defined under section 151 of the <u>Corrections Management Act 2007 (ACT)</u> and appointed under section 5.3 of this policy to perform <u>either</u> of the following roles in each discipline matter:</p> <ul style="list-style-type: none">• The responsible correctional officer for reviewing disciplinary breach reports and laying a charge.• The responsible correctional officer for presiding and determining outcomes at disciplinary hearings.

Reporting Correctional Officer

A correctional officer who provides an initial report about an alleged disciplinary breach to a Presiding Officer in accordance with section 156 of the Corrections Management Act 2007 (ACT).

4 PRINCIPLES

- 4.1 Disciplinary action must be carried out in a manner that is proportionate, fair and transparent with as little formality and technicality and as quickly as the requirements of the Corrections Management Act 2007 (ACT) and proper consideration of the charge allows.
- 4.2 Any administrative penalties imposed must be appropriate, consistent and proportionate to each incident and with the objectives of correcting behaviour, promoting rehabilitation and ensuring the safety, security and good order in a correctional centre.
- 4.3 Administrative penalties must not be imposed by a correctional officer before a charge has been admitted to by the accused detainee under Division 10.3.1 of the Corrections Management Act 2007 (ACT) or found proven by the Presiding Officer following a disciplinary hearing under Part 11.3 of the Corrections Management Act 2007 (ACT).
- 4.4 Detainees must be provided written notice of the disciplinary process and their right to respond when charges are made against them.
- 4.5 The standard of proof applied in a disciplinary hearing is whether a disciplinary breach charge has been proven on the balance of probabilities.
- 4.6 The rules of evidence do not apply to disciplinary proceedings, and evidence must not be taken on oath or affirmation during a disciplinary hearing.
- 4.7 The principle of privilege against self-incrimination applies to the discipline process. There is no power under this policy to compel a detainee to answer questions which would incriminate them or expose them to an administrative penalty.
- 4.8 Disciplinary charges will not be laid for the following actions unless there has also been a risk to the health and/or safety of another person, or to security and good order at a correctional centre:
 - a. self-harm; or
 - b. a positive result to a drug test on admission under the Drug and Alcohol Testing Policy.
- 4.9 Detainees have the right not to be tried or punished more than once in relation to the same disciplinary breach in accordance with section 24 of the Human Rights Act 2004 (ACT). Disciplinary action must not be taken against a person who is facing criminal charges in relation to the disciplinary breach or who has been convicted of the criminal offence by a court in relation to the breach. A detainee who has been disciplined under this policy must not be prosecuted in relation to the same disciplinary breach.
- 4.10 All ACTCS staff must act consistently with human rights principles when undertaking their duties and treat detainees humanely and with respect in

relation to their inherent dignity in accordance with the Human Rights Act 2004 (ACT).

5 MANAGEMENT OF THE DISCIPLINARY PROCESS

- 5.1 The disciplinary process comprises the following stages:
- a. Preliminary stage
 - i. alleged breach of discipline
 - ii. breach report (the “initial report”) by the Reporting Correctional Officer and consideration by first Presiding Officer whether to refer the report to an Investigating Officer
 - iii. if referred, consideration and report by Investigating Officer
 - iv. decision by first Presiding Officer about action(s), including laying a disciplinary change
 - b. Internal inquiry stage
 - i. charge by first Presiding Officer
 - ii. opportunity for accused detainee to elect to have the disciplinary charge dealt with by consent
 - iii. inquiry by second Presiding Officer
 - iv. disciplinary hearing by second Presiding Officer
 - v. finding if the disciplinary charge is proven or not
 - vi. imposition of administrative penalties if charge is proven or admitted
 - c. internal review of second Presiding Officer’s inquiry decision by General Manager
 - d. external adjudication by adjudicator to review internal review decision by General manager.
- 5.2 The General Manager of a correctional centre will nominate locations for holding disciplinary hearings under this policy.

Roles and Responsibilities

- 5.3 The following roles must be established in accordance with the Corrections Management Act 2007 (ACT) for disciplinary processes:

Section	Function	Designation	Responsibilities
153	Investigating Officer	Staff member – designation according to position description	Preparing a report to inform the Presiding Officer of: <ul style="list-style-type: none"> • any relevant information relating to the incident, including reports and other evidence • recommendations for action by the Presiding Officer and reasons for the recommendations
182(a) - (b)	2 x Presiding Officers	Correctional Officers Grade 3 (CO3)	First Presiding Officer:

		Correctional Officers Grade 4 (CO4)	<ul style="list-style-type: none"> • reviewing disciplinary breach reports and determining whether to refer the report to an investigator • warning and reprimanding detainees • issuing a charge notice to a detainee <p>Second Presiding Officer:</p> <ul style="list-style-type: none"> • conducting disciplinary inquiry and disciplinary hearings into detainee breaches of discipline • warning and reprimanding detainees • imposing a limited range of administrative penalties
--	--	-------------------------------------	---

- 5.4 An Investigating Officer must:
- a. not have had any direct involvement in the incident related to a disciplinary breach (i.e. the Investigating Officer must not be a witness to the incident or be the Reporting Correctional Officer)
 - b. complete a D11.F3: Investigating Officer's report and gather relevant evidence, including CCTV and incident reports, but excluding interviews, for the first Presiding Officer.
- 5.5 The first Presiding Officer must:
- a. not have had any direct involvement in the incident related to a disciplinary breach (e.g. the first Presiding Officer must not be a witness to the incident, the Reporting Correctional Officer or the Investigating Officer)
 - b. receive all D11.F1: Breach of discipline reports and identify whether to take action in relation to the relevant alleged breach of discipline under section 6 of this policy, including whether to charge a detainee with a disciplinary charge
 - c. complete a D11.F2: Charge notice including an indicative administrative penalty for the alleged breach if the first Presiding Officer decides to charge the detainee with a disciplinary charge.
- 5.6 The second Presiding Officer must:
- a. not have had any direct involvement in the incident related to a disciplinary breach (e.g. the second Presiding Officer must not be a witness of the incident or the Reporting Correctional Officer or the Investigating Officer)
 - b. be a different person from the Presiding Officer who issued the D11.F2: Charge notice

- c. adjudicate all disciplinary hearings in an unbiased and impartial manner to reach a fair decision
- d. determine proportionate administrative penalties where a breach is proven.

6 BREACHES OF DISCIPLINE

6.1 The following disciplinary breaches apply to detainees in ACTCS custody:

<i>Corrections Management Act 2007 (ACT)</i>	
Section	Breach
152(a)	Contravening a direction given to the detainee by the Director-General or a corrections officer under the <i>Corrections Management Act 2007 (ACT)</i> or the <i>Crimes (Sentence Administration) Act 2005 (ACT)</i>
152(b)	Being in a prohibited area, without a corrections officer's approval
152(c)	Smoking in a non-smoking area at a correctional centre
152(d)	Taking (in any way) alcohol or a drug into the detainee's body
152(e)	Providing a positive test sample for alcohol or a drug when directed, under the <i>Corrections Management Act 2007 (ACT)</i> or the <i>Crimes (Sentence Administration) Act 2005 (ACT)</i> , to provide a test sample
152(f)	Making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the director-general's approval
152(g)	Gambling
152(h)	Being disrespectful or abusive towards a corrections officer in a way that undermines the officer's authority
152(i)	Being disrespectful or abusive towards someone in a way that is likely to provoke a person to be violent
152(j)	Intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the detainee or anyone else
152(k)	Fighting
152(l)	Assaulting someone else
152(m)	Theft
152(n)	Possessing stolen property
152(o)	Possessing or dealing in things without the Director-General's approval
152(p)	Intentionally or recklessly damaging or destroying property belonging to someone else
152(q)	Interfering with property belonging to someone else, without approval by the owner of the property
152(r)	Interfering with anyone's personal monitoring device without the Director-General's approval

152(s)	Creating or participating in a disturbance, or other activity, likely to endanger security or good order at a correctional centre
152(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
152(u)	Doing anything for the purpose of escaping, or assisting a detainee to escape, from detention
152(v)	Offering, giving or taking a bribe
152(w)	Attempting, or assisting anyone else attempting, to commit another disciplinary breach
152(x)	Threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (s)
152(y)	Anything else as prescribed by regulation
<i>Corrections Management Regulation 2010 (ACT)</i>	
Section	Breach
48(a)	Failing to maintain an acceptable standard of behaviour towards people, including behaving in an obscene, indecent, offensive, racist or disorderly manner
48(b)	Failing to comply with health, hygiene and dress standards, including keeping a cell, room or cottage in good order, and keeping clothing and bedding, and any other article issued to the detainee, clean and in good order
48(c)	Leaving a location without the approval of the director-general or a corrections officer
48(d)	Feigning illness
48(e)	Entering another detainee's cell, room or cottage unit without a corrections officer's approval
48(f)	Going within 10 metres of a fence separating different areas of the Alexander Maconochie Centre without a corrections officer's approval
48(g)	If the detainee is housed in a cottage—going within 10 metres of a cell block without a corrections officer's approval
48(h)	If the detainee is housed in a cottage—passing an item to, or receiving an item from, a detainee housed in a cell block
48(i)	Failing to attend a muster

- 6.2 Correctional officers who believe, on reasonable grounds, that a detainee has committed a disciplinary breach under section 6.1 may decide to take one or more of the following actions:
- a. counsel, warn or reprimand the detainee and case note the action on the detainee's electronic record

- b. complete a D11.F1: Breach of discipline about the alleged disciplinary breach and provide it to the first Presiding Officer.
- 6.3 A correctional officer must submit a D11.F1: Breach of discipline and any other relevant forms to the first Presiding Officer as soon as practicable after the alleged breach has occurred and, other than in exceptional circumstances, prior to completing their duty period.
- 6.4 No administrative penalties can be imposed at this stage.

7 INVESTIGATION AND CHARGE

Actions by first Presiding Officer

- 7.1 On receipt of a D11.F1: Breach of discipline, the first Presiding Officer must first consider whether further investigation is appropriate, and if so, refer the D11.F1: Breach of discipline, to the Investigating Officer.
- 7.2 If no further investigation is required, or on receipt of a D11.F3: Investigating Officer's Report, the first Presiding Officer may:
 - a. take no further action
 - b. counsel, warn or reprimand the detainee
 - c. where the first Presiding Officer determines that a breach of discipline may have been committed, the first Presiding Officer may decide to charge the detainee by completing a D11.F2: Charge notice and providing it to the detainee
 - d. refer the allegation to the chief of police or the director of public prosecutions for investigation as a criminal offence
 - e. direct that the detainee be placed in investigative segregation in accordance with sections 7.17 and 7.18 of this policy.
- 7.3 No administrative penalties can be imposed at this stage.

Investigation

- 7.4 On receipt of a D11.F1: Breach of discipline, the Investigating Officer must complete a D11.F3: Investigating Officer's Report and collate other relevant information to assist the first Presiding Officer to determine an appropriate action under section 158 of the Corrections Management Act 2007 (ACT).

Laying a charge

- 7.5 When providing the D11.F2: Charge notice to the detainee, the first Presiding Officer must make reasonable efforts to ensure that the detainee understands:
 - a. the disciplinary breach charge
 - b. details of the conduct which lead to the discipline breach charge including the time and date (or time period) in which the breach is alleged to have happened
 - c. the proposed disciplinary action
 - d. that the detainee may either have the charge dealt with by consent by accepting both the alleged charge (admission) and proposed penalty, or may contest the charge through the disciplinary hearing process (inquiry)

- e. If the detainee wishes to have the charge dealt with by consent, they must do so in writing within two (2) days unless the presiding officer believes, on reasonable grounds, that an extension of time is appropriate.
- 7.6 The detainee must be informed that if they elect to contest the charge, no administrative penalty can be imposed until a disciplinary hearing has been held and the charge is found proven.

Accepting or contesting a charge

- 7.7 A detainee may admit to a disciplinary breach and the proposed administrative penalty by completing the relevant section in writing on the D11.F2: Charge notice. This is also referred to as electing to have the discipline charge dealt with by consent.
- 7.8 A detained electing to have a disciplinary charge dealt with by consent must do so within 2 days or within the extension of time if and extension is granted by the first presiding officer under s 167(3) of the Corrections Management Act 2007 (ACT).
- 7.9 A detainee who has admitted a disciplinary breach and accepted the proposed administrative penalty prior to hearing must only receive the proposed administrative penalty prescribed on the D11.F2: Charge notice in accordance with section 168 of the Corrections Management Act 2007 (ACT).
- 7.10 Where a detainee does not elect to admit to the charge or is silent or unclear as to whether they admit to a charge, they are deemed to be contesting the disciplinary breach charge and the matter will proceed to an inquiry disciplinary hearing under section 8 of this policy.
- 7.11 No administrative penalty can be imposed until a hearing has been held and only if the charge is found proven.

Breaches referred to police

- 7.12 Where the first Presiding Officer determines that an incident is to be referred to police, the first Presiding Officer must:
- a. complete a D11.F8: Notice of incident referral
 - b. provide the notice to the accused detainee in person and inform the detainee that the incident has been referred to police for investigation.
- 7.13 No further disciplinary action must be taken when a referral to police is made.
- 7.14 A referral must be in writing and accompanied by a report by the first Presiding Officer.
- 7.15 The Director, Intelligence Unit, must establish arrangements for the relevant Presiding Officer to be informed of the outcomes of any incidents referred to police and obtain weekly updates on the status of the referred matters.
- 7.16 Where police do not act on a referral, or charge the detainee following investigation, the first Presiding Officer may resume disciplinary proceedings under this policy for any D11.F1: Breach of discipline reports received.

Investigative segregation

- 7.17 The Reporting Correctional officer or the first Presiding Officer may direct that a detainee be placed in investigative segregation subject to section 161 of the *Corrections Management Act 2007 (ACT)* and in accordance with the *Management of Segregation and Separate Confinement Policy*.
- 7.18 A direction for investigative segregation may only be given if the officer believes, on reasonable grounds, that segregation of the detainee is necessary or prudent for the purposes of the disciplinary investigation including to prevent risk of:
- a. harm or threatened harm to detainees or anyone else
 - b. perversion, or attempted perversion, of the investigation
 - c. undermining the security and/or good order within the correctional centre.
- 7.19 Investigative segregation must be authorised by the General Manager or delegate and the need for the detainee to remain in investigative segregation must be reviewed in accordance with the *Management of Segregation and Separate Confinement Policy* and *Segregation Operating Procedure*.

8 DISCIPLINARY HEARINGS

- 8.1 If an accused detainee is given a *D11.F2 Charge Notice* and does not elect to have the charge dealt with by consent in writing, a second Presiding Officer must conduct an inquiry into the charge under section 170 of the *Corrections Management Act 2007 (ACT)*.
- 8.2 The second Presiding Officer must not have had any involvement in the incident which gave rise to the alleged discipline breach or charge of the discipline breach (i.e., the second Presiding Officer must not be a witness, Reporting Correctional Officer, Investigating Officer, or first Presiding Officer).
- 8.3 A hearing must be scheduled under section 195(3) of the *Corrections Management Act 2007 (ACT)*. Notice must be given to the detainee in the *D11.F2 Charge Notice* in accordance with section 194 of the *Corrections Management Act 2007 (ACT)*.
- 8.4 No administrative penalty can be imposed until the internal inquiry is completed and only if the charge is found proven following proper consideration of the charge and procedures under Part 11.2 of the *Corrections Management Act 2007 (ACT)*.
- 8.5 The second Presiding Officer may request that the Investigating Officer undertake further investigations to assist with the hearing.
- 8.6 An accused detainee retains the privilege against self-incrimination and the right to remain silent throughout a disciplinary hearing and must not be forced or compelled to answer questions which may incriminate them.
- 8.7 Detainees may respond to the alleged breach of discipline and may request any witnesses to attend the hearing by completing a written *D11.F7: Detainee statement*.
- 8.8 The second Presiding Officer must determine whether any witnesses, including the reporting officer, or reports are required prior to hearing, and provide a formal written notice requesting a person to attend as a witness, or provide

relevant information, for a hearing, in accordance with sections 197 and 201 of the Corrections Management Act 2007 (ACT).

- 8.9 The second Presiding Officer must determine whether appropriate supports for or advice about the detainee may be required during the hearing, including:
- a. where a detainee has disability, language or comprehension difficulties
 - b. ensuring the Aboriginal and Torres Strait Islander Unit has been notified that an Aboriginal and Torres Strait Islander detainee may require support
 - c. where the Presiding Officer has concerns about a detainee's physical or mental health
- 8.10 A disciplinary hearing should be commenced within five (5) business days from the issuing of a D11.F2: Charge notice.

Non-attendance of detainee

- 8.11 Where a detainee cannot attend a hearing because of health issues or a court attendance, the second Presiding Officer must adjourn and set a new hearing date.
- 8.12 Where a detainee refuses to attend a hearing, or to answer questions, the second Presiding Officer may proceed with the hearing in the detainee's absence in accordance with section 202(4) of the Corrections Management Act 2007 (ACT) and record the outcome on the D11.F5: Hearing result.

Conducting a disciplinary hearing

- 8.13 The second Presiding Officer must make a comprehensive record of the hearing in the D11.F4: Hearing report including clear reasons for their decision on the balance of probabilities and record the outcome on the D11.F5: Hearing result.
- 8.14 Detainees who remain silent or do not provide an adequate response when asked whether they wish to admit to the disciplinary breach or contest the charge will be recorded as contesting the charge.
- 8.15 Where a 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,
- the second Presiding Officer will provide the detainee with a written direction excluding them from the remainder of the hearing under section 202(3) of the Corrections Management Act 2007 (ACT).

Witnesses

- 8.16 Where a detainee contests a charge, the second Presiding Officer may in writing require the Reporting Correctional Officer and/or any other relevant person to appear at the disciplinary hearing at a stated time and place to answer questions or produce a document or other thing related to the charge.
- 8.17 The detainee may ask questions relevant to the charge of any witness at the hearing in accordance with section 202(1)(a) of the Corrections Management Act 2007 (ACT).

- 8.18 The second Presiding Officer may disallow a question put to a person (including the detainee) at the hearing if the second Presiding Officer considers the question is unfair, unduly prejudicial or vexatious or involves an abuse of the inquiry process.
- 8.19 The second Presiding Officer may allow a Correctional Officer or anyone else to be present and to be heard at the disciplinary hearing. Witnesses should not be present to hear evidence of other witnesses during the hearing.

Adjournment

- 8.20 Where appropriate support for a detainee or advice about a detainee as described in section 8.9 of the Corrections Management Act 2007 (ACT) has not been arranged prior to hearing, the second Presiding Officer must adjourn the hearing so that appropriate supports or advice can be arranged.
- 8.21 Where the second Presiding Officer has given consent for an accused detainee to be legally represented under section 8.25 of this policy, if the legal representative is not available to attend at the time of a disciplinary hearing, the second Presiding Officer may adjourn the hearing until the legal representative is available to attend.
- 8.22 Where a witness is not available to attend at the time of a hearing, the second Presiding Officer may adjourn the hearing until the witness is available to attend.
- 8.23 Where it is not possible to complete a hearing for any reason, the second Presiding Officer will adjourn. The second Presiding Officer will determine the next date for the hearing and ensure the detainee is provided with an updated D11.F2: Charge notice.
- 8.24 Disciplinary charges must be resolved in a timely manner. Where significant delays occur, the second Presiding Officer must consider whether natural justice and procedural fairness is being met.

Legal representation

- 8.25 A detainee can request legal representation for a disciplinary hearing, but it will be allowed only where the second Presiding Officer has consented to the representation in accordance with section 202(1)(b) of the Corrections Management Act 2007 (ACT).
- 8.26 In deciding whether to consent to legal representation, the second Presiding Officer must consider the following:
- a. the seriousness of the disciplinary breach charge
 - b. the administrative penalty likely to be imposed for the disciplinary breach charge
 - c. the likely procedural complexities
 - d. the accused detainee's capacity for self-representation
 - e. the need for a fair and prompt resolution of the charge.
- 8.27 The second presiding officer should allow legal representation if the circumstances of the detainee mean that they would not be able to understand and participate effectively in the hearing without the support of a legal representative.

- 8.28 Where a detainee has been permitted legal representation for a disciplinary hearing, access to information by legal representatives will be limited to that which an unrepresented detainee can access. Detainees must request information sought by their legal representatives.
- 8.29 The second Presiding Officer may receive any submissions from a detainee's legal representative prior to the hearing, but may decline to consider any submissions until the hearing. Submissions from legal representatives submitted after the hearing date will not be considered.
- 8.30 Where the availability of a legal representative is causing significant delay, the second Presiding Officer may consider proceeding with the hearing to ensure the disciplinary charge is resolved in a timely manner, if this is consistent with natural justice, as per section 8.24 of this policy.

Dismissal of charges following inquiry

- 8.31 Where the second Presiding Officer does not believe, on the balance of probabilities, that the charge is proven they must dismiss the charge against the detainee.
- 8.32 Where the second Presiding Officer is satisfied, on reasonable grounds, that it would be appropriate to do so, they may dismiss the charges.
- 8.33 The second Presiding Officer must provide the detainee with the decision in writing and the reasons for the decision.

9 ADMINISTRATIVE PENALTIES

Disciplinary action – charge dealt with by consent

- 9.1 Where a detainee admits to a disciplinary breach and accepts the indicative penalty prior to hearing, the first Presiding Officer may impose the administrative penalty set out in the *D11.F2: Charge notice*.
- 9.2 The detainee must only receive the indicative administrative penalty prescribed on the *D11.F2: Charge notice* in accordance with sections 167 and 168 of the *Corrections Management Act 2007 (ACT)*.
- 9.3 If the first Presiding Officer decides to proceed with the proposed penalty, they must give the accused written notice of the decision to proceed with the disciplinary action proposed in the *D11.F2 Charge Notice*.

Disciplinary action – charge found proven at disciplinary hearing

- 9.4 Where:
- a. a detainee admits to a disciplinary breach in a hearing; or
 - b. the second Presiding Officer is satisfied, on the balance of probabilities, that a disciplinary breach is proven in accordance with section 171(2) of the *Corrections Management Act 2007 (ACT)*,
- the second Presiding Officer may take one or more of the following disciplinary actions against a detainee in accordance with section 183 of the *Corrections Management Act 2007 (ACT)*:
- a. deliver a verbal reprimand to the detainee for committing the disciplinary breach

- b. provide a written warning to the detainee about committing a disciplinary breach
 - c. impose an appropriate and proportionate penalty, or combination of penalties, on the detainee.
- 9.5 The second Presiding Officer must ask the detainee whether they wish to make a statement in mitigation of any penalty and record any statement in the D11.F4: Hearing report.

Determining penalty

- 9.6 When determining an appropriate and proportionate administrative penalty in accordance with section 9.7 of this policy and section 183(3) of the Corrections Management Act 2007 (ACT), the Presiding Officer should consider:
- a. the circumstances and seriousness of the breach
 - b. the detainee’s behavioural record and length of sentence (if sentenced)
 - c. any admission to the breach by the detainee
 - d. any disability, mental health condition, or other physical condition that may have been a contributing factor to the breach or which may be impacted by the proposed penalty
 - e. the interest in supporting the rehabilitation of the detainee
 - f. the need to maintain safety, security and good order in a correctional centre
 - g. any other relevant consideration.
- 9.7 The following administrative penalties apply to breaches of discipline:

Maximum level of administrative penalty	<u>Corrections Management Act 2007 (ACT)</u>
A financial penalty of up to \$500	Section 184(a)
A withdrawal of privileges for up to 180 days	Section 184(b)
A requirement to perform up to two (2) weeks extra work	Section 184(c)
3, 7, or 28 days of separate confinement	Section 184(d)

- 9.8 Where the breach is proven and has directly resulted in loss to any other person, the detainee may be required to make reparation including by payment not exceeding \$500.
- 9.9 Where a loss of privileges is imposed as a penalty for a disciplinary breach, the second Presiding Officer must ensure that the practical effect of the penalty does not limit any minimum entitlements under chapter 6 of the Corrections Management Act 2007 (ACT).
- 9.10 A withdrawal of privileges as an administrative penalty takes precedence over the detainee’s access to privileges under the Incentives and Earned Privileges

Policy and does not automatically trigger a review of the detainee's Incentives and Earned Privileges status. Any review of Incentives and Earned Privileges status must be in accordance with the Incentives and Earned Privileges Policy.

- 9.11 Where a detainee has been charged with two (2) or more disciplinary breaches and the charges relate to the same conduct, the total of any one kind of penalty imposed by the second Presiding Officer must not exceed the maximum that may be imposed for any one (1) of the disciplinary breaches.
- 9.12 The second Presiding Officer must explain the administrative penalty to the detainee in the hearing and provide the detainee with a hard copy and via email of the D11.F5: Hearing result within 24 hours of the disciplinary hearing.

10 REVIEW OF DECISIONS

Internal Review

- 10.1 A detainee may request the General Manager to review the disciplinary hearing decision by completing a D11.F6: Hearing review form.
- 10.2 Any request for a review must be submitted to a correctional officer within seven (7) days of receipt of the D11.F5: Hearing result. Requesting a review of a disciplinary hearing decision does not prevent taking of disciplinary action while the review is carried out.
- 10.3 The Investigating Officer must ensure that all relevant material and records relating to the hearing are provided to the General Manager.
- 10.4 The General Manager must complete a review of a hearing within 14 days of receipt of a D11.F6: Hearing review form.
- 10.5 On review of a hearing, the General Manager may confirm the original decision, withdraw or alter any penalties, or amend or set aside the decision.
- 10.6 The General Manager must give the detainee notice of the outcome of the review, including:
- a. reasons for the decision
 - b. a statement about the effect of Division 10.3.4 of the Corrections Management Act 2007 (ACT) (External review of inquiry decisions) including that a detainee may apply for an external adjudicator review of an Internal Review decision by the General Manager.

External adjudicator review

- 10.7 Where the General Manager has reviewed a disciplinary decision, and the detainee wishes to appeal the outcome, they may request a review by the external adjudicator by completing a D11.F6: Hearing review form.
- 10.8 Any request for a review must be submitted to a correctional officer within seven (7) days of receipt of the notice of the outcome of the General Manager's review. The officer in receipt of a D11.F6: Hearing review form for an external adjudicator must provide it to the Director, Office of the Commissioner.
- 10.9 Requesting a review of the internal review decision does not prevent taking of disciplinary action while the review is carried out.

- 10.10 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.
- 10.11 A detainee may also refer the matter to the Official Visitor, Ombudsman, Human Rights Commission, or apply for judicial review in accordance with relevant legislation.

11 RECORDS

- 11.1 The following records, where required, must be completed by the responsible person within the allocated timeframe:

Title	Purpose	Responsible officer	Timeframe	Section of CMA
D11.F1: Breach of discipline	To record and provide details of an alleged breach of discipline by a detainee	All correctional officers	During the duty period in which the incident occurred	s 156(2)(e)
D11.F2: Charge notice	To charge a detainee with a disciplinary breach, set out an indicative penalty, and inform them of the time and date for hearing	First Presiding Officer	Within three (3) business days from receipt of a breach report	s 159 s 167(1) s 168(4) s 194 s 196 s 197 s 200 s 201(2)
D11.F3: Investigating Officer's report	To provide details of the Investigating Officer's investigation to the Presiding Officer	Investigating Officer	Prior to adjudication by first Presiding Officer	S 157
D11.F4: Hearing report	To record the substantive proceedings in a hearing	Second Presiding Officer	Before close of business on the day of the hearing	s 199
D11.F5: Hearing result	To record and inform a detainee about the disciplinary decision and any penalty	Second Presiding Officer	Within 24 hours of a hearing	s 171(5)
D11.F6: Hearing review form	To allow detainees to request a review of a disciplinary decision	Detainee	Within seven (7) days of receipt of hearing result	s 173
		General Manager	Within 14 days of receipt	
D11.F7: Detainee statement	To allow detainees to submit a written statement regarding the	Detainee	Prior to the hearing	s 194(3)

	alleged breach, and request witnesses for the hearing			
D11.F8: Notice of incident referral	To inform detainees that a breach of discipline report has been received but that the incident is currently being investigated by police	First Presiding Officer	Within three (3) business days from receipt of a breach report	s 158(3)
Disciplines Log	To record the disciplines and penalties in a correctional centre	Administrative Officer	Ongoing	

- 11.2 Where required, the General Manager will establish governance arrangements, including a *Disciplines Log* to record all outcomes under this policy.
- 11.3 A copy of the *Disciplines Log* must be provided to the Team Leader, AMC Compliance, via email to AMCexecsupport@act.gov.au on the first Friday of each month.
- 11.4 The General Manager will maintain appropriate arrangements to ensure that a copy of all records under this policy are stored on a detainee's electronic record and in accordance with the requirements of the *Territory Records Act 2002 (ACT)*.

12 RELATED DOCUMENTS

- A – D11.F1: Breach of discipline
- B – D11.F2: Charge notice
- C – D11.F3: Investigating Officer's report
- D – D11.F4: Hearing report
- E – D11.F5: Hearing result
- F – D11.F6: Hearing review form
- G – D11.F7: Detainee statement
- H – D11.F8: Notice of incident referral
- I – Detainee Discipline – Laying a Charge Operating Procedure
- J – Detainee Discipline – Disciplinary Hearing Operating Procedure
- K – Detainee Discipline – Administrative Penalties Operating Procedure
- L – Management of Segregation and Separate Confinement Policy
- M – Segregation Operating Procedure
- N – Incident Reporting, Notifications and Debriefs Policy
- O - Incentives and Earned Privileges Policy
- P - Disciplines Log

Ray Johnson, APM
Commissioner
ACT Corrective Services
28 January 2022

Document details

Criteria	Details
Document title:	<i>Corrections Management (Detainee Discipline) Policy 2022</i>
Document owner/approver:	Commissioner, ACT Corrective Services
Date effective:	The day after the notification date
Review date:	Three years after the notification date
Compliance with law:	This policy reflects the requirements of the <i>Corrections Management (Policy Framework) Policy 2020</i>
Responsible officer:	Deputy Commissioner Custodial Operations

Version Control			
Version no.	Date	Description	Author
V1	November 21	First Issued	S Viereck