

JU302*

Prisons Act 1981

Prisons Amendment Regulations 2007

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Prisons Amendment Regulations 2007*.

2. Commencement

These regulations come into operation on the day on which the *Prisons and Sentencing Legislation Amendment Act 2006* comes into operation.

3. The regulations amended

The amendments in these regulations are to the *Prisons Regulations 1982**.

[* Reprinted as at 19 November 2004.]

4. Regulation 2 amended

(1) Regulation 2 is amended as follows:

- (a) before “In” by inserting the subregulation designation “(1)”;

- (b) by inserting after “In these regulations” —
“ unless the contrary intention appears ”;
- (c) by deleting the full stop after the definition of
“organization” and inserting instead a semicolon;
- (d) by inserting in the appropriate alphabetical positions —

“

“**approved**” means approved in writing by the chief executive officer;

“**supervision**” by a person of a prisoner does not require the person to be in the physical presence of the prisoner.

”.

- (2) At the end of regulation 2 the following subregulation is inserted —

“

- (2) In these regulations a reference to —
 - (a) a person being “in charge” of a prisoner; or
 - (b) a prisoner being “in the charge” of a person,is a reference to the person being in the physical presence of the prisoner and having reasonable control over him or her.

”.

5. **Regulation 14 replaced**

Regulation 14 is repealed and the following regulation is inserted instead —

“

14. **Duty regarding prisoner absent from prison**

A prison officer in charge or having the supervision of any prisoner absent from a prison shall ensure that the prisoner complies with the provisions, conditions and stipulations of the relevant permit for absence, or order under section 85 of the Act, relating to the prisoner, and shall at all times keep the prisoner under the prison officer’s charge or supervision.

”.

6. **Regulation 18 amended**

Regulation 18(1)(b) is amended by inserting after “his charge” —

“ or under his supervision ”.

7. **Regulation 26 amended**

Regulation 26 is amended by deleting the definition of “approved”.

8. Regulation 26C amended

Regulation 26C(3)(b) is amended by deleting “person approved by the chief executive officer” and inserting instead —

“ approved person ”.

9. Part V Division 1 heading inserted

Before regulation 32 the following heading is inserted in Part V —

“

Division 1 — Prisoner property

”.

10. Regulation 33 amended

Regulation 33(2) is amended by deleting “section 22” and inserting instead —

“ section 85 ”.

11. Part V Division 2 heading inserted

After regulation 37 the following heading is inserted —

“

Division 2 — Prisoner records

”.

12. Regulation 39 amended

Regulation 39(3) is repealed.

13. Part V Division 3 heading inserted

After regulation 39 the following heading is inserted —

“

Division 3 — Prisoner conduct

”.

14. Part V Division 4 heading inserted

After regulation 42 the following heading is inserted —

“

Division 4 — Prisoner work

”.

15. Part V Division 5 heading inserted

After regulation 44 the following heading is inserted —

“

Division 5 — Prisoner gratuities and other moneys

”.

16. Regulation 45B amended

- (1) Regulation 45B is amended by inserting before “Where” the subregulation designation “(1)”.
- (2) At the end of regulation 45B the following subregulation is inserted —
“
 - (2) Where a prisoner’s gratuities are cancelled for a period not exceeding 14 days under a determination under Part VII of the Act, that prisoner shall for that period continue to perform work.”.

17. Part V Division 6 heading inserted

After regulation 50 the following heading is inserted —

“

Division 6 — Information provided to prisoners

”.

18. Part V Division 7 heading inserted

After regulation 51 the following heading is inserted —

“

Division 7 — Visitors

”.

19. Regulation 54A repealed

Regulation 54A is repealed.

20. Part V Division 8 heading inserted

After regulation 54BA the following heading is inserted —

“

Division 8 — Separation of prisoners

”.

21. Part V Divisions 9, 10 and 11 inserted

After regulation 54C the following Divisions are inserted into Part V —

“

Division 9 — Absence permits

54D. Prescribed purposes or circumstances for absence permits

For the purposes of section 83(3)(a) of the Act, a prescribed purpose is, or prescribed circumstances are —

- (a) facilitating the rehabilitation of a prisoner and the successful reintegration of the prisoner into the community;

- (b) facilitating the education and training of a prisoner;
- (c) facilitating the employment, or the preparation for employment, of a prisoner;
- (d) facilitating participation by a prisoner in community work or work associated with the operation of the prison;
- (e) facilitating the maintenance by a prisoner of cultural ties and enabling the prisoner to meet cultural obligations;
- (f) facilitating the observance by a prisoner of religious or spiritual beliefs or practices;
- (g) facilitating a prisoner's participation in recreational activities or other activities that will promote the wellbeing of the prisoner;
- (h) preparing a prisoner for release;
- (i) facilitating the maintenance of contact between a prisoner and his or her family, or any other approved person, and enabling the prisoner to meet responsibilities to that family or person, including parental or guardianship responsibilities;
- (j) enabling the prisoner to be absent from prison on compassionate grounds;
- (k) facilitating the provision of medical, dental or other approved ancillary health services to a prisoner;
- (l) facilitating the investigation of an offence or the administration of justice.

54E. Duration of absence permit

- (1) In the case of an absence permit for a purpose or in circumstances mentioned in regulation 54D(a), (b), (c), (d), (e), (f), (g) or (h), the period specified in the absence permit under section 83(2)(a) of the Act shall be not longer than —
 - (a) the shortest period reasonably required for that purpose or in those circumstances, including travel time; or
 - (b) 12 hours, plus travelling time to and from the prison,

whichever is shorter.

- (2) In the case of an absence permit for a purpose or in circumstances mentioned in regulation 54D(i), the period specified in the absence permit under section 83(2)(a) of the Act shall be not longer than —
- (a) the shortest period reasonably required for that purpose or in those circumstances, including travel time; or
 - (b) 36 hours, plus travelling time to and from the prison,
- whichever is shorter.
- (3) In the case of an absence permit for a purpose or in circumstances mentioned in regulation 54D(j), (k) or (l), the period specified in the absence permit under section 83(2)(a) of the Act shall be the shortest period reasonably required for that purpose or in those circumstances, including travel time.

54F. Eligibility for absence permit

- (1) A prisoner is not eligible to receive an absence permit except in accordance with this regulation.
- (2) Every prisoner is eligible to receive an absence permit for a purpose or in circumstances mentioned in regulation 54D(j), (k) or (l).
- (3) A prisoner who has been given a minimum security rating by the chief executive officer is eligible to receive an absence permit for a purpose or in circumstances mentioned in regulation 54D(a), (b), (c), (d), (e), (f), (g), (h) or (i).
- (4) A prisoner sentenced to a life term or indefinite imprisonment is eligible to receive an absence permit for a purpose or in circumstances mentioned in regulation 54D(a), (b), (c), (d), (e), (f), (g), (h) or (i) if that purpose is, or those circumstances are, part of a re-socialisation programme approved under the *Sentence Administration Act 2003* section 13.

54G. Arrangements relating to accommodation and community work

The chief executive officer may —

- (a) enter into an arrangement with a person for —
 - (i) a prisoner to stay in accommodation provided or arranged by the person; or
 - (ii) a prisoner to perform community work for, or arranged by, the person; or
 - (iii) the person to accompany the prisoner,

while the prisoner is absent from prison on an absence permit; and

- (b) as part of an arrangement under paragraph (a)(ii), require a financial contribution, payment or commitment from the person to cover expenses incurred by the Department in relation to the absence permit.

54H. Terms of paid employment of prisoner on an absence permit

Where a prisoner is in paid employment while absent from prison on an absence permit, the terms and conditions, including the amount payable, in respect of the employment shall be —

- (a) the terms and conditions including the amount payable under any award or agreement in force under —
 - (i) the *Industrial Relations Act 1979*; or
 - (ii) the *Industrial Relations Act 1988* of the Commonwealth,that applies to the employment; or
- (b) if there is no such award or agreement — such terms and conditions, including the amount payable, as are agreed upon by the employer and the chief executive officer.

54I. Appointment of escorts and supervisors

The chief executive officer may appoint as an escort or supervisor of a prisoner who is absent from prison on an absence permit —

- (a) a prison officer; or
- (b) a contract worker as defined in the *Court Security and Custodial Services Act 1999* section 3; or
- (c) any other person who the chief executive officer thinks is fit to be appointed as an escort or supervisor.

54J. Restrictions of giving absence permits

The chief executive officer shall not give an absence permit to a prisoner unless he or she is satisfied that the prisoner will, at all times that the prisoner is absent from prison under the permit, comply with every condition of the permit.

54K. Standard conditions of absence permits

- (1) An absence permit is subject to the condition that the prisoner shall —
 - (a) at all times that the prisoner is absent from prison under the permit, remain in the charge of an escort, or under the supervision of a supervisor, as specified in the permit; and
 - (b) comply with every order or direction of that escort or supervisor.
- (2) An absence permit for a period requiring overnight accommodation is subject to the condition that the prisoner shall stay in approved accommodation and no other accommodation.

54L. Amounts deducted from moneys paid to a prisoner on an absence permit

- (1) The chief executive officer may order a deduction from moneys paid to a prisoner employed while the prisoner is absent from prison on an absence permit —
 - (a) to pay any outstanding fines, restitution or compensation payable by the prisoner under a conviction by a court or a determination under Part VII of the Act; or
 - (b) for the prisoner's savings or purchases; or
 - (c) for the prisoner's contributions to the upkeep of his or her family, or any other approved person; or
 - (d) to defray any expenses relating to board or employment incurred while the prisoner was absent on the permit.
- (2) When money is deducted under subregulation (1), the balance remaining shall not be less than one week's gratuities payable for work classified under regulation 44(1) as Level 1.

Division 10 — Interstate absence permits**54M. Interpretation**

In this Division, unless the contrary intention appears —

“corresponding law” means a law that is declared to be a corresponding law in regulation 54N;

“external facility” has the meaning given to that term in section 23(1) of the Act;

“interstate escort” means a person who is authorised under an interstate absence permit to escort an interstate prisoner to or through this State;

“interstate absence permit” —

- (a) in relation to a prisoner in this State, means an absence permit authorising the person to travel to or through a participating State or Territory; and
- (b) in relation to an interstate prisoner, means a permit given under a corresponding law authorising the prisoner to travel to or through this State;

“interstate prisoner” means a person imprisoned in a participating State or Territory;

“participating State or Territory” means any other State or a Territory in which a corresponding law is in force.

54N. Corresponding laws

A law of another State or a Territory specified in the Table to this regulation is declared to be a corresponding law for the purposes of this Division.

Table

Law	State/Territory
<i>Prisoners' Interstate Leave Act 1997</i>	Australian Capital Territory
<i>Crimes (Administration of Sentences) Act 1999</i> Part 2 Division 3 Subdivision 2	New South Wales
<i>Prisons (Correctional Services) Act</i> Part XVII Division 2	Northern Territory
<i>Corrective Services Act 2006</i> Chapter 2 Part 2 Division 9	Queensland
<i>Correctional Services Act 1982</i> Part 4 Division 5	South Australia
<i>Corrections Act 1997</i> Part 6	Tasmania
<i>Corrections Act 1986</i> Part 8A	Victoria

54O. Interstate absence permit

The chief executive officer may, if he or she thinks it is appropriate, give to a prisoner in this State an interstate absence permit for any purpose that, or in any circumstances where, an absence permit may be given.

54P. Notice to participating State or Territory

On giving an interstate absence permit to a prisoner in this State, the chief executive officer shall give written notice of the fact that the permit has been given, and of the period of the permit —

- (a) in relation to the participating State or Territory to which the prisoner is travelling —
 - (i) to the officer responsible for the administration of prisons (however described) in that State or Territory; and
 - (ii) to the chief officer of police of that State or Territory;
- and
- (b) in relation to any other participating State or Territory through which the prisoner is travelling — to the chief officer of police of that State or Territory.

54Q. WA escorts

If it is a condition of an interstate absence permit given to a prisoner in this State that the prisoner shall be escorted to or through a participating State or Territory, the permit —

- (a) authorises the escort to be in charge of the prisoner for the purpose of escorting the prisoner to or through the participating State or Territory in accordance with the permit; and
- (b) authorises the escort to be in charge of the prisoner for the purpose of returning the prisoner to the prison or any external facility from which the prisoner is absent,

except for any period during which the prisoner is in custody in a prison in a participating State or Territory under a provision of a corresponding law corresponding with regulation 54R(2) or 54T.

54R. Interstate escorts

- (1) An interstate escort is authorised, while in this State —
 - (a) to be in charge of an interstate prisoner for the purposes and period set out in the relevant interstate absence permit; and
 - (b) to be in charge of the interstate prisoner for the purpose of returning the prisoner to the participating State or Territory,

except for any period during which the prisoner is in custody in a prison, external facility or police lock-up under subregulation (2) and regulation 54T.

- (2) If the interstate prisoner is in the charge of an interstate escort and requires overnight accommodation while in this State, the prisoner may, at the request of the escort, be detained in a prison, external facility or police lock-up for that period, and the relevant interstate absence permit is sufficient authority for that detention.

54S. Arrest of interstate prisoners

If, while an interstate prisoner is in this State, the prisoner —

- (a) escapes or attempts to escape from the charge of an interstate escort or from the custody of a prison, external facility or police lock-up under regulation 54R(2); or
- (b) otherwise breaches a condition of the relevant interstate absence permit,

the prisoner may be arrested, without warrant, by a prison officer, a police officer, the prisoner's escort, if any, or a contract worker as defined in the *Court Security and Custodial Services Act 1999* section 3, and taken to the nearest police station.

54T. Return of arrested interstate prisoners to State or Territory of origin

- (1) An interstate prisoner who is arrested under regulation 54S shall be brought before a court of summary jurisdiction within 2 working days of the day of arrest and may be detained in a prison, external facility or police lock-up until that occurs.
- (2) The court of summary jurisdiction may, if the court thinks appropriate, order that the prisoner —
 - (a) be returned by the prisoner's interstate escort to the State or Territory in which the relevant interstate absence permit was given; or
 - (b) be delivered into the custody of another escort for the purposes of being returned to that State or Territory,

as the case requires.

- (3) If an order is made under subregulation (2)(b) —
 - (a) the prisoner may be detained in a prison, external facility or police lock-up until —
 - (i) the order is executed; or
 - (ii) the expiration of 7 days from the making of the order,
- whichever occurs first; and

- (b) the order, if not executed, expires at the end of that 7 day period.

54U. Status of detained interstate prisoners

An interstate prisoner shall, while detained in a prison, external facility or police lock-up under regulation 54R(2) or 54T, be taken to be a prisoner for the purposes of —

- (a) the Act; and
- (b) these regulations except paragraph (a) of the definition of “interstate absence permit” in regulation 54M.

Division 11 — Bring up orders

54V. Superintendent authorised to issue bring up order

A superintendent of a prison is authorised for the purposes of section 85(1)(c) of the Act.

54W. Custody of prisoners on bring up orders

Where an order under section 85 of the Act is made —

- (a) the superintendent of the prison in which the prisoner is confined may charge a prison officer or officer with the execution of the order; and
- (b) a prisoner who is brought up under the order shall —
 - (i) while absent from a prison or other facility for the purpose specified in the order, be kept in the charge of a prison officer, officer or police officer; and
 - (ii) in due course and subject to any lawful order to the contrary, be returned to the custody from which the prisoner was brought up without prejudice to any cause or matter for which he or she was in that custody;

and

- (c) if the proceeding that the prisoner is required to attend is adjourned, the prisoner may during the adjournment —
 - (i) be taken to and confined in any prison or be kept at any place in the charge of the prison officer or officer charged with the execution of the order, a police officer or a contract worker as defined in the *Court Security and Custodial Services Act 1999* section 3; and

- (ii) be brought up from time to time and day-to-day to the court or place where his or her attendance is required.

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22. Regulation 73 amended

Regulation 73(2) is repealed.

23. Regulation 80 amended

Regulation 80(6) is amended by deleting “apparatus approved by the chief executive officer.” and inserting instead —

“ approved apparatus. ”.

24. Regulation 81A amended

Regulation 81A is amended by deleting the definition of “approved”.

25. Regulation 81B amended

Regulation 81B(1)(a) is amended by deleting “a training programme approved by the chief executive officer;” and inserting instead —

“ an approved training programme; ”.

26. Regulations 87 and 88 inserted

After regulation 86 the following regulations are inserted —

“

**87. Restriction of access to exchange information:
s. 113(9)(b)**

- (1) A person shall not publish information disclosed under section 113(6) of the Act without the written approval of the chief executive officer.

Penalty: a fine of \$1 000.

- (2) The chief executive officer shall not give approval under subregulation (1) unless the chief executive officer is satisfied that —

- (a) the research for which the information was disclosed was conducted in a methodologically sound manner; and
- (b) the report based on that research is factually correct; and
- (c) the publication does not identify individuals, reveal confidential Departmental information or otherwise pose a security risk to the operations of the Department.

88. Prescribed kinds of information disclosed to victims

For the purposes of section 113B(2) of the Act, prescribed kinds of information are —

- (a) details of where the prisoner is being detained or is otherwise located while serving a sentence and notification and details of any proposed transfer;
- (b) any security rating assigned to the prisoner by the chief executive officer and notification and details of any proposed change in that security rating;
- (c) details of each sentence the prisoner is serving and notification and details of any changes resulting from any appeal;
- (d) the date, time and circumstances of any escape from custody by the prisoner and notification of the subsequent recapture of the prisoner;
- (e) notification of the death, or entry into hospice care, of the prisoner;
- (f) a description of any programme in which the prisoner has participated or is participating while in prison;
- (g) notification and details of any release or absence from custody of the prisoner;
- (h) details of any conditions attached to the release or absence from custody of the prisoner impacting on the victim and notification when any of those conditions cease to have effect;
- (i) the region, city, town or suburb in which the prisoner will reside upon release;
- (j) a photograph of the prisoner.

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By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.
