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YOUNG OFFENDERS ACT 1994

**YOUNG OFFENDERS
AMENDMENT
REGULATIONS 2005**

Young Offenders Act 1994

Young Offenders Amendment Regulations 2005

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Young Offenders Amendment Regulations 2005*.

2. Commencement

These regulations come into operation on 1 July 2005.

3. The regulations amended

The amendments in these regulations are to the *Young Offenders Regulations 1995**.

[* *Reprint 1 as at 21 November 2003.*]

4. Part 3 Division 1 repealed

Part 3 Division 1 is repealed.

5. Part 5 repealed

Part 5 is repealed.

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6. Part 7 amended

The heading to Part 7 is amended by deleting “Gratuities” and inserting instead —

“ **Detainee gratuities** ”.

7. Part 7A inserted

After Part 7 the following Part is inserted —

“

Part 7A — Detainee privileges**46A. Granting and withdrawing of privileges**

- (1) In this Part —
“**authorised**” means authorised by the superintendent;
“**privilege**” means a concession or luxury extended to a detainee in addition to any rights provided by statutory or common law.
- (2) A privilege may be extended to a detainee at the discretion of an authorised officer.
- (3) An authorised officer may withdraw a privilege from any detainee at any time satisfied that —
 - (a) the privilege is being misused;
 - (b) the detainee has been involved in a breach of a rule made under section 181 of the Act;
 - (c) continued provision of that privilege constitutes a threat to, or a breach of, the security of the detention centre; or
 - (d) the detainee has use or possession of an article and that use or possession has not been approved or granted by an authorised person.
- (4) An authorised officer must withdraw a privilege from a detainee when requested to do so by the Director of Juvenile Custodial Services.

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- (5) If a privilege is withdrawn by an authorised officer, the detainee may seek a review of the decision to withdraw that privilege by the superintendent.

46B. Privileges

- (1) The privileges that may be extended to a detainee may include access to —
- (a) the canteen;
 - (b) recreation and sporting facilities;
 - (c) a television set, radio, cassette player, compact disc player or computer game;
 - (d) musical instruments;
 - (e) items of personal property approved by the superintendent;
 - (f) the library for recreational purposes;
 - (g) special visits.
- (2) The superintendent may approve other items as privileges.

”

8. Part 8 repealed and Parts 8, 9, 10 and 11 inserted

Part 8 is repealed and the following Parts are inserted instead —

“

**Part 8 — Responsibilities and discipline
of employees**

Division 1 — Preliminary

47. Interpretation and application

In this Part —

“**group worker**” means a person appointed under section 11(1a)(a) of the Act;

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“miscellaneous employee” means an officer or employee appointed under section 11(1a)(b) of the Act.

Division 2 — Employment generally**48. Application**

- (1) The “employment” provisions in this Division apply to group workers and miscellaneous employees but do not apply to persons appointed under section 11(1) of the Act.
- (2) This Division applies in addition to, and does not limit, the provisions in Division 3.

49. Officers and employees of particular classes prescribed (section 11(1a)(b))

- (1) The following descriptions of classes of officers and employees are prescribed for the purposes of section 11(1a)(b) of the Act —
 - (a) medical staff;
 - (b) teaching staff;
 - (c) program support staff;
 - (d) detention centre support staff.
- (2) The following officers and employees are included in those classes —
 - (a) medical staff — persons who have undergone medical, nursing or health training and hold qualifications indicating successful completion of that training;
 - (b) teaching staff — persons who provide recreation or sports supervision, teachers, vocational trainers and social trainers;

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- (c) program support staff — counsellors, program facilitators and librarians;
- (d) detention centre support staff — cleaning staff, laundry staff, gardening staff, vehicle driving staff, maintenance staff and hairdressers.

50. Functions of officers and employees of particular classes prescribed (section 11(2))

The functions of miscellaneous employees are —

- (a) those set out in their contracts of employment;
- (b) the duties described in section 11A of the Act for all employees;
- (c) to obey all lawful orders given to them by the superintendent and any other officer having authority or control over them.

51. Circumstances in which employment may be terminated (section 11(1a))

- (1) A group worker or miscellaneous employee who is, in the opinion of the chief executive officer, unable to perform his or her duties properly by reason of his or her physical or mental health may be required by the chief executive officer to submit to a medical examination by a board consisting of a medical practitioner nominated by that group worker or miscellaneous employee, and 2 medical practitioners appointed by the Executive Director, Public Health.
- (2) If, 7 days prior to the day of examination, the group worker or miscellaneous employee has not nominated a medical practitioner who has consented to attend the medical examination, the Executive Director, Public Health may appoint all 3 medical practitioners to constitute the board.

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- (3) If a board, or the majority of the members of a board, reports to the chief executive officer that a group worker or miscellaneous employee is unable to perform his or her duties properly by reason of his or her physical or mental health, the chief executive officer may terminate the employment of the group worker or miscellaneous employee.
 - (4) A group worker or miscellaneous employee who provides false, incomplete or misleading information in or with respect to an application for engagement as a group worker or miscellaneous employee may have his or her employment terminated by the chief executive officer.
 - (5) Where the chief executive officer is of the opinion during, or at the end of, the period of probation of a group worker or miscellaneous employee that the group worker or miscellaneous employee is unsatisfactory in the performance of his or her duties, or unsuitable to be a group worker or miscellaneous employee, the chief executive officer may terminate the employment of that group worker or miscellaneous employee.
 - (6) The chief executive officer may extend the period of probation for a group worker or miscellaneous employee.
- 52. Notice prior to termination of employment (section 11(1a))**
- (1) A group worker or miscellaneous employee whose employment is terminated under regulation 51(3) is entitled to one month's notice from the chief executive officer or to one month's pay in lieu of notice.

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- (2) A group worker or miscellaneous employee who leaves his or her employment of his or her own accord must give one month's notice in writing or must forfeit one month's pay.
- (3) A group worker or miscellaneous employee on probation must give 2 weeks' notice of an intention to leave the employment, or must forfeit 2 weeks' pay.
- (4) If a group worker or miscellaneous employee on probation has his or her employment terminated for reasons other than regulation 51(4) or disciplinary reasons under Division 3, the group worker or miscellaneous employee must be given 2 weeks' notice by the chief executive officer or 2 weeks' pay in lieu of notice.
- (5) Where a period of notice is required to be given under this regulation, the chief executive officer may, without prejudice to the entitlement of the group worker or miscellaneous employee to pay, abridge or dispense with such notice.

Division 3 — Employee Discipline**53. Application**

- (1) The "discipline" provisions in this Division apply to group workers and miscellaneous employees, but do not apply to persons appointed under section 11(1) of the Act.
- (2) In this Division —
"employee" is used to describe group workers and miscellaneous employees;
"serious breach of discipline" means where it appears to the superintendent before whom a charge of a breach of discipline is presented for validation or

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to a superintendent or other person appointed to hold an inquiry into the charge that, having regard to —

- (a) the nature and particulars of the charge; or
- (b) if an inquiry has commenced, to the evidence presented at the inquiry,

the charge cannot be adequately dealt with by a superintendent or other person under regulation 64(1) (in the event of an admission or finding of guilt).

54. Breaches of discipline

An employee who —

- (a) disobeys or disregards a lawful order;
- (b) breaches a duty or responsibility imposed upon him or her by the Act or these regulations, or any rules made under the Act that are applicable to that employee;
- (c) commits an act of misconduct that relates to the performance of his or her duties or fitness as an employee;
- (d) is negligent or careless in the performance of his or her functions; or
- (e) commits an act of victimisation within the meaning of section 15 of the *Public Interest Disclosure Act 2003*,

commits a breach of discipline.

55. Laying a charge

- (1) A charge that an employee has committed a breach of discipline may be laid by any officer or employee having authority or control over the employee to a superintendent.

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- (2) A charge —
- (a) is to be in writing, and contain particulars of the alleged breach of discipline that gave rise to the charge; and
 - (b) is to be validated by a superintendent before a copy of the charge is furnished to the employee under regulation 56.

56. Give notice when charge is laid

- (1) Subject to subregulation (2) and regulation 66, if a charge of a breach of discipline is made to a superintendent, the superintendent is to give the subject of the charge detailed notice in writing of the nature of the charge.
- (2) If a charge is laid under subregulation (1) that an employee has committed a serious breach of discipline, the charge is to be referred by the superintendent to the chief executive officer.
- (3) Notice under subregulation (1) is to set out —
 - (a) 48 hours or such longer period as is specified in the notice within which the employee has to respond formally to the charge, as to whether they admit or deny the truth of the charge;
 - (b) the manner in which the inquiry will be conducted if the charge is denied or if no response is received; and
 - (c) the manner in which the breach of discipline will be dealt with, if the breach is admitted.

57. Where a charge is denied or ignored

- (1) If an employee denies a charge, or does not respond to a charge, within the time to respond referred to in regulation 56(3), the superintendent may conduct an

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inquiry, or the chief executive officer may direct another person to conduct an inquiry, in relation to the charge, in accordance with regulations 61 and 62.

- (2) Despite subregulation (1), a charge may be referred to the chief executive officer if regulation 66(1) is satisfied.

58. Where a breach of discipline is admitted

- (1) If an employee admits to breaching discipline within the time to respond referred to in regulation 56(3) —
 - (a) the superintendent may make a finding, and take action in accordance with regulation 64; or
 - (b) an inquiry into the charge may be commenced in accordance with regulations 61 and 62.
- (2) Despite subregulation (1), the admission may be referred to the chief executive officer if regulation 66(1) is satisfied.

59. Inquiry into charge

- (1) Where a charge of a breach of discipline against a person —
 - (a) is denied by the employee under regulation 57(1);
 - (b) does not provoke a response from that employee within the time allowed; or
 - (c) is admitted, but the superintendent wishes to conduct an inquiry regardless of the admission,

an inquiry into the charge is to be commenced in accordance with regulations 61 and 62.

- (2) An inquiry is to be held expeditiously but not earlier than 3 days after subregulation (1) is satisfied.

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r. 8**60. Persons involved in an inquiry**

- (1) The employee against whom the charge is laid may nominate a person to appear with them for support but cannot nominate a legal practitioner.
- (2) An officer is to be nominated by the Director of Juvenile Custodial Services to lead the case against the employee who is the subject of the charge.

61. Determination of charge

- (1) The procedure to determine a charge of a breach of discipline is as follows —
 - (a) the officer is to state the charge against the employee and call any witnesses in support of the charge;
 - (b) the chief executive officer, superintendent or other person appointed to conduct the investigation may take evidence on oath, affirmation or otherwise at his or her discretion;
 - (c) the officer is to conduct the examination-in-chief of each witness, and the employee or a person nominated to support him or her under regulation 60(1) may cross-examine each witness;
 - (d) the officer may re-examine each witness on matters arising out of cross-examination;
 - (e) the officer is to close his or her case; and
 - (f) the employee may then give evidence, and the employee or the nominated support person may call witnesses, and paragraphs (c), (d) and (e) apply subject to necessary modification.
- (2) The person conducting an inquiry is not bound by the rules of evidence.

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- (3) A deviation from the procedure in subregulation (1) that does not materially affect the inquiry does not invalidate the inquiry.

62. Guidelines for person conducting inquiry

- (1) The chief executive officer, superintendent or other person appointed to hear a charge of a breach of discipline —
 - (a) is to conduct the inquiry expeditiously and without undue adjournment or delay;
 - (b) is to keep or cause to be kept an adequate record of proceedings;
 - (c) may question a witness called; and
 - (d) may direct that a particular witness be called or call and question a witness.
- (2) The officer and the employee may question any witness called and questioned under subregulation (1)(d).

63. Finding following inquiry

- (1) After completing an inquiry under regulation 59, a finding must be made as to whether there was a breach of discipline committed.
- (2) If the outcome of an inquiry under regulation 59 is a finding that the employee has not committed a breach of discipline, the superintendent must notify the employee of that finding without undue delay.

64. Action that may be taken following finding

- (1) If the outcome of an inquiry held by a superintendent or another person directed to conduct an inquiry is a finding that the employee has committed a breach of

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discipline, the superintendent may do one or more of the following —

- (a) issue a caution to the employee;
 - (b) reprimand the employee;
 - (c) impose on the employee a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last day during which he or she was at work as an employee before the day on which that finding was made.
- (2) The chief executive officer must be informed of any disciplinary action taken under subregulation (1).

65. Review by CEO

- (1) Following a finding that an employee has committed a breach of discipline, the employee may apply to have the finding, or the action taken following the finding, or both, reviewed by the chief executive officer.
- (2) The application must be —
 - (a) in writing, setting out details of the finding and the issues or actions that are to be reviewed;
 - (b) signed by the employee; and
 - (c) lodged with the superintendent without undue delay, but no later than 10 days after the finding,

and the superintendent must forward every application to the chief executive officer.

- (3) A copy of an application received by the chief executive officer is to be made available to the other party to the inquiry, and the party may respond in writing within 14 days.

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- (4) After the time in subregulation (3) has passed, the chief executive officer is to review the finding or actions set out in the application and, in doing so, may inform himself or herself by considering such proceedings or matters as are considered equitable or necessary.
- (5) Depending upon the basis of the application, the chief executive officer may —
 - (a) confirm the superintendent's finding;
 - (b) confirm the action taken following the finding;
 - (c) vary the action taken following the finding;
 - (d) reverse the superintendent's finding and quash the finding; or
 - (e) revoke the action taken.

66. Referral where charge appears too serious

- (1) If a charge is the subject of an inquiry by the superintendent or another person directed to conduct an inquiry and, before a finding is made, it appears to the superintendent or another person that an employee has committed a serious breach of discipline, the charge or admission is to be referred to the chief executive officer by the superintendent.
- (2) If a charge is referred under this regulation, the superintendent may suspend the employee from duty on either full or partial pay, or without pay and other entitlements, pending an inquiry under regulation 67.
- (3) A suspension imposed under subregulation (2) must be confirmed by the chief executive officer within 2 working days.
- (4) An employee suspended under subregulation (2) who is not found to have committed a breach of discipline is entitled to full pay and entitlements for the period of that suspension.

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r. 8**67. Inquiry into a referred charge**

If a charge is referred to the chief executive officer, the chief executive officer shall —

- (a) hold an inquiry into the charge in accordance with this Part; or
- (b) appoint some other person (including, if he or she so determines, the superintendent who forwarded the charge to the chief executive officer) to hold an inquiry into the charge in accordance with this Part.

68. Outcome of inquiry into a referred charge

- (1) If the outcome of an inquiry under regulation 67 is a finding that an employee has not committed a breach of discipline, the person holding the inquiry must notify the employee of that finding without undue delay.
- (2) If the outcome of that inquiry under regulation 67 is a finding that the employee has committed a breach of discipline, the person holding the inquiry may do one or more of the following —
 - (a) issue a caution to the employee;
 - (b) reprimand the employee;
 - (c) transfer the employee to another detention centre;
 - (d) impose on the employee a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last 5 days during which he or she was at work as an employee before the day on which that finding was made;
 - (e) suspend the employee from duty for a period not exceeding 10 working days, on full or partial pay, or without pay and other entitlements;

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- (f) reduce the monetary remuneration of the employee or reduce the level of classification of the employee;
- (g) dismiss the employee,

or, except when the employee is dismissed, take action under any 2 or more paragraphs.

- (3) A penalty imposed under subregulation (2) by a superintendent or other person appointed by the chief executive officer does not take effect unless, and until, it is validated by the chief executive officer.
- (4) The chief executive officer may, instead of validating that penalty, impose a different penalty of a kind referred to in subregulation (2), but the chief executive officer cannot impose a greater penalty than that imposed under subregulation (3) unless he or she has provided the employee with an opportunity of making representations in relation to his or her intention to impose a greater penalty and has considered any representations made by the employee.
- (5) Where a penalty is imposed under this regulation on an employee who is suspended from duty under regulation 66 on partial pay or without pay and other entitlements, the chief executive officer may, having regard to the nature and particulars of the breach of discipline for which the penalty is imposed and the nature of that penalty, direct that the employee is to be paid full or partial pay and other entitlements for the period of the suspension.

69. Fines may be deducted from pay, etc.

- (1) A fine lawfully imposed under these regulations on an employee may be deducted, by order of the chief executive officer, from the pay due to the employee or any other moneys due to the employee in respect of his or her employment.

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- (2) A penalty lawfully imposed under these regulations on an employee continues to have effect and is to be given effect to despite any review under regulation 65, but the chief executive officer shall ensure that any necessary financial adjustments are made or other appropriate action is taken upon the determination of the review.
- (3) Notwithstanding subregulation (2), a dismissal carried out under these regulations does not take effect until 14 days after the employee is informed of the dismissal and, in every case where there is a dismissal, the employee is automatically suspended from duty without pay or other entitlements from the time the dismissal is announced until the expiration of the period of 14 days.
- (4) An employee who is suspended from duty under subregulation (3) is entitled to receive full pay and entitlements for the period of the suspension if the finding of committing a serious breach of discipline is overturned.

Division 4 — Use of force**70. Application**

- (1) The “use of force” provisions in this Division apply to persons appointed under section 11(1) of the Act and group workers but do not apply to miscellaneous employees.
- (2) The “use of force and restraint” provisions in this Division apply to a declared facility under section 12 of the Act and to a detention centre under section 13 of the Act.

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71. Prescribed force (section 11C(1))

- (1) For the purposes of section 11C(1) of the Act —
“prescribed force” means the degree of physical force which is the minimum required to control a detainee’s behaviour in the circumstances.
- (2) A person cannot use a physical restraint hold when applying prescribed force unless —
 - (a) that person has received instruction in the proper use of that hold; and
 - (b) the use of that type of hold has been authorised by the superintendent.

72. Prescribed circumstances for use of force (section 11C(2))

- (1) For the purposes of section 11C(2) of the Act —
“prescribed circumstances” means an immediate period when a detainee is imminently presenting a risk of physical injury to himself or herself, other detainees or staff.
- (2) As soon as the imminent risk has passed and the detainee has been stabilised then prescribed circumstances for the use of force no longer exist.
- (3) If prescribed force or another similar physical restraint is used on a detainee, whether in prescribed circumstances or not, the detainee must be examined by the medical staff as soon as is practicable after the incident.
- (4) A nurse or medical officer must ensure that photographs are taken immediately of any injury sustained either by the detainee or staff and the photographs, along with a copy of any medical report, must be forwarded to the superintendent.

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- (5) A written report of any incident involving the use of prescribed force or another similar physical restraint must be provided to the superintendent by the staff member involved with respect to each detainee.

Part 9 — Confinement of detainees**Division 1 — Preliminary****73. Interpretation**

In this Part —

“**unlock hours**” means the period during which detainees who are not subject to confinement or restraint are able to leave their sleeping quarters.

74. Imposition of confinement

- (1) A superintendent or a visiting justice may order that a detainee be confined to that detainee’s sleeping quarters or to a designated room as a way of dealing with a detainee who has been found to have committed a detention offence.
- (2) A superintendent may order that a detainee be confined to that detainee’s sleeping quarters or to a designated room in order to maintain good government, good order or security in a detention centre.

Division 2 — Detention offence confinement**75. Application**

This Division applies to an order by a superintendent or a visiting justice that a detainee be confined to that detainee’s sleeping quarters or to a designated room as a way of dealing with a detainee who has been found to have committed a detention offence.

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76. Confinement procedures

- (1) A superintendent must make and maintain a record of an order to confine a detainee.
- (2) Where the confinement is ordered to take place in a designated room, the room used for the confinement must be assessed by the superintendent to be of an appropriate size and sufficiently ventilated and lit that the detainee can be confined in that room without injury to health.
- (3) A detainee confined under this Division is entitled to fresh air, exercise and staff company for a period of at least 30 minutes every 3 hours during unlock hours.

77. Confinement monitoring, searches, etc.

- (1) A detainee placed in confinement must be subject to continuous monitoring for the first 30 minutes of that confinement.
- (2) After the first 30 minutes of confinement, a confined detainee must be subject to regular monitoring carried out in accordance with a written management regime that has been endorsed by the superintendent.
- (3) The confinement of a detainee is subject to the usual regimen of searches, checks, observation, notification, record-keeping, reporting and other requirements that are imposed under administrative rules and instructions.

Division 3 — Good government, good order or security confinement**78. Application**

- (1) This Division applies to an order by a superintendent that a detainee be confined to that detainee's sleeping

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quarters or to a designated room as a way of maintaining good government, good order or security.

- (2) A superintendent may order that a combined period of separate confinement and a period of work time be imposed on a detainee for the purpose of this Division but, in that case, the period of work time is to be counted as confinement time for the purposes of section 196(2)(e) of the Act.

79. Confinement procedures

- (1) A superintendent must make and maintain a record of an order to confine a detainee.
- (2) The superintendent that ordered confinement must inform the detainee of the reason for the confinement.
- (3) Where the confinement is ordered to take place in a designated room, the room used for the confinement must be assessed by the superintendent to be of an appropriate size and sufficiently ventilated and lit that the detainee can be confined in that room without injury to health.
- (4) A detainee whose confinement is for 12 hours or longer is entitled to at least one hour of exercise each 6 hours during unlock hours.
- (5) The superintendent may at any time cut short a period of confinement or a period of work time that has been ordered and return the detainee to the appropriate program area.

80. Confinement monitoring, searches, etc.

- (1) A confined detainee must be subject to the regimen of searches, checks, observation, notification and other requirements (if any) set out in juvenile custodial rules made for this purpose and approved by the chief executive officer.

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- (2) The confinement of a detainee is subject to the usual regimen of searches, checks, observation, notification, record-keeping, reporting and other requirements that are imposed under administrative rules and instructions.

Part 10 — Search and seizure

Division 1 — Preliminary

81. Interpretation and application of Part 10

- (1) In this Part —
- “**illegal**”, in relation to things, means an article or substance, the possession of which is unlawful;
- “**illegal thing**” means an article or substance that a person conducting a search suspects is illegal;
- “**substance**” includes any narcotic drug to which the *Misuse of Drugs Act 1981* applies, any drug that may be obtained by prescription, any solvent that might be abused and alcohol;
- “**unauthorised**”, in relation to things, means an article or substance —
- (a) that a detainee cannot have or retain without a prescription or the approval of the superintendent;
 - (b) that are not available to detainees generally, to prevent harm or self-harm; or
 - (c) that appear to a person conducting an authorised search to constitute a threat to or breach of the security or good order of the detention centre;
- “**unauthorised thing**” means an article or substance that a person conducting a search suspects is unauthorised.

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- (2) If a superintendent is uncertain as to the gender of a person to be searched under this Part —
 - (a) the superintendent must ask the person to advise whether a male or female should carry out the search and must act in accordance with the answer; and
 - (b) in the absence of an answer, the person is to be treated as if of the gender that the person outwardly appears to the superintendent to be.
- (3) In this Part, the manner in which a person can be searched is limited to either a “pat down” search or a “strip” search or both.
- (4) In this Part, if the superintendent is empowered to search a detainee, officer or other employee, or a person to whom Division 4 applies, the superintendent is empowered to direct an officer to undertake that search on his or her behalf.

82. Superintendent empowered to search

- (1) A superintendent is authorised to search any detainee in accordance with this Part and take from him or her any illegal or unauthorised thing found on his or her person.
- (2) A superintendent is authorised to search any officer or other employee in accordance with this Part in order to ascertain whether any illegal or unauthorised thing is in his or her possession.
- (3) A superintendent is authorised to search any person in the circumstances set out in regulation 91, including a child, in accordance with this Part in order to ascertain whether any illegal or unauthorised thing is in his or her possession.

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- (4) A superintendent is authorised to search any person or vehicle outside but near a detention centre in accordance with this Part, where in the opinion of the superintendent that search is necessary for the security or good order of the detention centre, in order to ascertain whether any illegal or unauthorised thing is present.

83. Superintendent empowered to search with assistance of trained dog

A superintendent is authorised to use a trained dog to assist in carrying out a search in accordance with this Part.

84. Superintendent empowered to use force when searching detainees

A superintendent is authorised to use such force as is reasonably necessary —

- (a) to perform a search; and
- (b) to take from a detainee in, entering or leaving a detention centre any illegal or unauthorised thing found during a search.

Division 2 — Searching detainees**85. When**

- (1) A detainee should be searched —
- (a) on admission to the detention centre;
 - (b) immediately before discharge from the detention centre;
 - (c) on leaving or returning to a detention centre; and
 - (d) when transferring from one detention centre to another.

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- (2) A detainee may be searched at any time, and in such a manner, as is considered necessary at the time by the superintendent.

86. How

- (1) A detainee may be searched using either a “pat” or “strip” search depending on the circumstances surrounding the requirement of the search.
- (2) A detainee should be “strip” searched if there are circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could —
- (a) jeopardise the safety, good order or security of the detention centre; or
 - (b) be used for self harm.
- (3) At least 2 officers must be present during a search of a detainee.
- (4) A detainee must not be “strip” searched in the sight or immediate presence of a person of the opposite gender.
- (5) Where practicable, a detainee should not be “strip” searched in the immediate presence of another detainee.
- (6) Any search of a detainee must be conducted with due regard to the decency and self-respect of the detainee.
- (7) Despite subregulation (4), a superintendent may direct that a search is to be carried out in the presence of a medical practitioner or a nurse.
- (8) Whenever a detainee is “strip” searched, each officer taking a role in that search must forward a written report of the search to the superintendent.

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87. If illegal or unauthorised things are found

- (1) If an illegal or an unauthorised thing is found on a detainee then the matter may be dealt with as a detention offence committed by the detainee under section 170 of the Act.
- (2) An illegal or unauthorised thing is to be dealt with in accordance with Division 6.
- (3) If an illegal thing is found on a detainee, the parent or the caregiver of the detainee is to be notified (where practicable) of the circumstances of that discovery by the superintendent.

Division 3 — Searching officers or other employees**88. When**

An officer or other employee may be searched —

- (a) on entering or leaving a detention centre; and
- (b) at such a time as is considered necessary at the time by the superintendent.

89. How

- (1) An officer or other employee may be searched using a “pat” search.
- (2) The search of an officer or other employee may include a search of any article or thing carried on them or under their control.
- (3) The refusal of an officer or other employee to submit to a search constitutes disobedience of a lawful order for the purposes of regulation 54.

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- (4) The search of an officer or other employee must be conducted —
 - (a) by an officer who has been appointed by the superintendent and who is of the same gender as the person being searched;
 - (b) in the presence of another staff member;
 - (c) out of sight of other persons unless the person being searched requests the presence of another person; and
 - (d) with due regard to the decency and self-respect of the person being searched.
- (5) The officers involved in the search must submit a written report to the superintendent.

90. If illegal or unauthorised things are found

- (1) If a search under this Division leads to the discovery of an illegal or unauthorised thing, the officers conducting the search are to inform the superintendent immediately.
- (2) An illegal or unauthorised thing is to be dealt with in accordance with Division 6.

Division 4 — Searching other persons**91. When**

- (1) A person who is not a detainee, or an officer or other employee, may be searched in the following circumstances —
 - (a) on seeking to enter a detention centre;
 - (b) on entering a detention centre;
 - (c) while in a detention centre;
 - (d) on seeking to leave a detention centre;
 - (e) immediately before leaving a detention centre;

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- (f) having just left a detention centre;
 - (g) subject to subregulation (2), when outside but near a detention centre.
- (2) If the superintendent is of the opinion that a search of a person, article or vehicle outside but near a detention centre is necessary for the security or good order of the detention centre, the superintendent may search any or all of the following —
- (a) that person;
 - (b) a person with that person, who is under the person's care and control;
 - (c) an article in the possession or control of that person or a person with them;
 - (d) a vehicle in the possession or control of the person.

92. How

- (1) A person described in regulation 91 may be searched using a "pat" search.
- (2) The search of a person described in regulation 91 is to include a request to voluntarily produce any thing that may jeopardise the safety, good order or security of the detention centre if taken inside, or which may be used by a detainee for self harm.
- (3) A person described in regulation 91 who —
 - (a) does not submit to a search ordered under this Division; or
 - (b) is in possession or control of anything requested for surrender under subregulation (2) of this regulation and does not produce it,may be refused entry to the detention centre on that occasion and on subsequent occasions and may be removed from the detention centre forthwith.

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- (4) Subject to subregulation (5), the search of a person described in regulation 91 must be —
- (a) conducted by an officer, who has been appointed by the superintendent, of the same gender as the person being searched and in the presence of another staff member;
 - (b) conducted out of sight of other persons unless the person being searched requests the presence of another person; and
 - (c) conducted expeditiously with due regard to the decency and self-respect of the person being searched.
- (5) If the person to be searched is a child that has not (or apparently has not) attained 10 years of age, the search is to be carried out —
- (a) expeditiously;
 - (b) by a female employee accompanied by at least one other female employee;
 - (c) in the presence of the person accompanying the child unless that person refuses to remain; and
 - (d) in the absence of any male employees.
- (6) All officers and employees conducting a search must submit a written report to the superintendent.

93. If illegal or unauthorised things are found

- (1) If a search under this Division leads to the discovery of an illegal or unauthorised thing, the officers conducting the search are to inform the superintendent immediately and —
- (a) if the thing is an illegal thing or an unauthorised thing and the search is conducted immediately prior to entering — ensure that the circumstances under which it was found are

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- noted and prevent that person from entering the detention centre while the thing is in his or her possession;
- (b) if the thing is an illegal thing or an unauthorised thing and the search is conducted whilst inside or before leaving the detention centre — ensure that the circumstances under which it was found are noted and ensure that the person is removed from the detention centre before returning the thing to the person;
 - (c) if the thing is an unauthorised thing and the search is conducted on a person who has just left a detention centre or is outside but near a detention centre — ensure that the circumstances under which it was found are noted before returning the thing to the person.
- (2) If an illegal thing is surrendered, it is to be dealt with in accordance with Division 6.
- (3) If a search reveals an illegal thing, the police may be informed of that discovery by the superintendent, and the person in apparent possession or control of that thing is to be requested, by the officer performing the search, to wait for the arrival of the police.
- (4) A person who is searched under this Division and who is in possession or control of an illegal or unauthorised thing —
- (a) may be refused entry to the detention centre on that occasion and on subsequent occasions; and
 - (b) may be removed from the detention centre forthwith.

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- (1) A superintendent may authorise the use of a trained dog to assist in carrying out a search if the purpose of a search is to detect whether illegal or unauthorised substances are or have been present.
- (2) The trained dog used must be a “prison dog” within the meaning of the *Prisons Act 1981* section 49A.
- (3) The superintendent may require a trained dog to be used to search a detainee while in detention, and a person, an officer or other employee, or property —
 - (a) on seeking to enter a detention centre;
 - (b) on entering a detention centre;
 - (c) while in a detention centre;
 - (d) on seeking to leave a detention centre;
 - (e) immediately before leaving a detention centre;
 - (f) having just left a detention centre; or
 - (g) when outside but near a detention centre, if the superintendent is of the opinion that it is necessary for the security or good order of the detention centre.

95. Dogs to be under the control of a dog handler

If the use of a trained dog to assist a search is authorised or required under regulation 94, the trained dog must be accompanied by, and under the control of, a “dog handler” within the meaning of the *Prisons Regulations 1982* regulation 81A.

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96. Dogs to be used in authorised manner

For a trained dog to be used appropriately by a dog handler in a search —

- (a) the dog handler must be the dog handler who has been allocated responsibility for the dog;
- (b) the dog must be under the control of the dog handler; and
- (c) the use of the dog must be in accordance with these regulations and any relevant rules.

97. Dogs in searches

- (1) A person who —
 - (a) assaults; or
 - (b) hinders or obstructs,

a trained dog under the control of a dog handler carrying out a search under this Division is to be deemed to have assaulted, or to have hindered or obstructed, the dog handler.

- (2) A trained dog under the control of a dog handler may enter, and be in, any place that an officer may lawfully enter or be in while carrying out a search for illegal or unauthorised substances, and no liability arises by reason only that the dog entered or was in that place, notwithstanding any other law.
- (3) Without limiting the generality of section 182 of the Act, an officer or a dog handler is not personally liable for injury or damage caused by the use of a trained dog under the control of a dog handler in carrying out a search for illegal or unauthorised substances, if that use was in accordance with this Part.

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- (4) Subregulation (3) does not apply if injury or damage occurs as a result of anything commanded or permitted by the dog handler without reasonable and probable cause.

Division 6 — Securing illegal or unauthorised things**98. Securing illegal or unauthorised things**

- (1) An illegal or unauthorised thing is to be placed in a heat-sealed, clear polythene evidence bag with a label showing —
- (a) the name of the person who was in apparent possession or control of the thing;
 - (b) the place of discovery and the signature of the officer that made the discovery; and
 - (c) the time and date of discovery,
- and the superintendent is to take and have custody of the thing.
- (2) When an illegal thing has been found and the police are called, the superintendent is to retain custody of that thing and ensure that police take custody of the illegal thing.
- (3) When an unauthorised thing has been found on a detainee, the superintendent is to retain custody of that unauthorised thing until the determination of any detention offence against the detainee related to that thing.
- (4) Subject to subregulation (3), where the superintendent has custody of an unauthorised thing the superintendent may —
- (a) return it to the detainee on his or her release;

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- (b) return it to the person believed by the superintendent to be the rightful owner;
 - (c) order that the thing be destroyed or otherwise dealt with.
- (5) If an illegal thing that is a substance is found, the existence and movement of the substance is to be recorded by means of entries made in an “Unlawful Drugs Register” maintained at the detention centre.
- (6) If an illegal or unauthorised thing requires analysis to confirm its composition, the superintendent may authorise the delivery of a sample taken under this Part to an approved analysis agent to be analysed in the manner set out in Part 11.

Part 11 — Body samples**Division 1 — Taking body samples****99. Officer who suspects unauthorised or illegal substance use to inform superintendent**

An officer who has reasonable grounds for suspecting that a detainee has used or ingested an unauthorised or illegal substance must inform the superintendent.

100. Circumstances that may prompt requirement for body samples

- (1) The superintendent may require a body sample from a detainee in the following circumstances —
 - (a) if the superintendent has been informed of an officer’s suspicion under regulation 99;
 - (b) if the superintendent has reasonable grounds for suspecting that the detainee has used or ingested an unauthorised or illegal substance;

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- (c) if a random process of sampling has been instituted in the detention centre and the detainee is selected at random.
- (2) The superintendent is to direct, either generally or in respect of the particular case, whether a body sample is to be taken in the form of blood, breath or urine.

101. Taking of body samples

- (1) If the body sample to be taken is breath, the breath sample is to be tested by means of an apparatus of a kind approved by the Director of Juvenile Custodial Services, and that apparatus is to be operated by a person approved by the superintendent.
- (2) If the body sample to be taken is blood or urine, the blood or urine taken is to be labelled with —
 - (a) the name of the person from whom the sample was taken;
 - (b) the type of the sample;
 - (c) the name of the person who took the sample; and
 - (d) the date and time that the sample was taken.
- (3) A body sample that is to be taken in the form of blood or urine is to be taken by a medical practitioner or a registered nurse.

Division 2 — Analysis**102. Approval of analysis agent**

- (1) Subject to subregulation (4), the chief executive officer is to approve at least one organisation, in respect of each type of body sample authorised to be taken under this Part, as the organisation whose employees are to carry out analysis of samples of that type.

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- (2) Subject to subregulation (4), the chief executive officer is to approve at least one organisation, in respect of illegal or unauthorised things seized under Part 10, as an organisation whose employees are authorised to carry out analysis of things seized under that Part.
- (3) The chief executive officer may, at any time, cancel the approval of an organisation and approve another organisation under subregulation (1) or (2).
- (4) If the chief executive officer does not approve a particular organisation under subregulation (1) or (2), the Chemistry Centre (WA) is the relevant approved analysis agent.
- (5) For the purposes of these regulations, an “**analyst**” is a person appointed as an analyst under the *Health Act 1911* and employed by an approved analysis agent.

103. Analyst to give certificate

- (1) If a sample has been delivered under this Part to an organisation which is, at the time of delivery, the relevant approved analysis agent —
 - (a) that organisation must ensure that the analysis of the sample is completed;
 - (b) an analyst employed by that organisation who carries out the analysis must complete a certificate in a form approved by the chief executive officer; and
 - (c) the analyst must forward that certificate to the superintendent of the detention centre in which the detainee is kept.
- (2) Subregulation (1) applies even if, after delivery of the sample, the approval of the organisation as the relevant approved analysis agent is cancelled.

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- (3) The superintendent must give a copy of the certificate referred to in subregulation (1) to the detainee from whom the sample was taken or obtained.

104. Admissibility of analyst's certificate

The analyst's certificate is admissible as evidence against a detainee charged with a detention offence and is prima facie evidence of the matters certified in the certificate.

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By Command of the Governor,

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



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