
JUSTICE

JM301*

Court Security and Custodial Services Act 1999

**Court Security and Custodial Services
Amendment Regulations 2000**

Made by the Administrator in Executive Council.

1. Citation

These regulations may be cited as the *Court Security and Custodial Services Amendment Regulations 2000*.

2. Commencement

These regulations come into operation on 31 July 2000.

3. The regulations amended

The amendments in these regulations are to the *Court Security and Custodial Services Regulations 1999**.

[* *Published in Gazette 17 December 1999, pp. 6226-8.*]

4. Heading inserted

Before regulation 1 the following heading is inserted —

“ **Part 1 — Preliminary** ”

5. Regulation 2A inserted

After regulation 2 the following regulation is inserted —

“

2A. Interpretation

A reference to a court custody centre in a regulation set out in the Table to this regulation does not include a reference to a court custody centre if the management, control and security of the court custody centre is provided by the Commissioner of Police under an arrangement under section 19 of the Act.

Table

r. 6	r. 10
r. 7	r. 13
r. 8	r. 14
r. 9	r. 15

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6. **Heading inserted**

Before regulation 3 the following heading is inserted —

“ **Part 2 — General** ”.

7. **Regulations 5 to 27 inserted**

After regulation 4 the following is inserted —

“

5. **Prescribed lock-ups — s. 3**

The building located at Lot 1328 Robinson Street Carnarvon in the State of Western Australia that is —

- (a) adjacent to the Carnarvon courthouse;
- (b) adjacent to the Carnarvon police station; and
- (c) used as a lock-up facility,

is a lock-up for the purposes of the Act.

6. **Recording particulars of persons admitted to lock-ups and court custody centre**

- (1) The person in charge of a lock-up or court custody centre is to ensure that the information referred to in subregulation (2) is recorded, in a manner approved by the CEO, in relation to each person in custody, intoxicated detainee and person apprehended under the Mental Health Act who is admitted to the lock-up or court custody centre.
- (2) The information to be recorded for the purposes of subregulation (1) is as follows —
 - (a) the person's name, address and date of birth;
 - (b) the form of legal custody in which the person is held;
 - (c) the state of the person's health and details of any medical condition which might place the person or any other person at the lock-up or court custody centre at risk;
 - (d) the time of the person's admission to, and discharge from, the lock-up or court custody centre;
 - (e) the authority for the person's placement in, and removal from, the lock-up or court custody centre.

7. **Recording critical and reportable incidents at lock-ups and court custody centres**

- (1) The person in charge of a lock-up or court custody centre is to ensure that the information referred to in subregulation (2) is recorded, in a manner approved by

the CEO, in relation to the following events that occur at or in the vicinity of or otherwise affect the lock-up or court custody centre —

- (a) any event, actual or imminent of a serious or critical nature —
 - (i) that has jeopardised or is likely to jeopardise the safety or security of any person;
 - (ii) that has adversely affected or is likely to adversely affect the security, good order or management of the lock-up or court custody centre; or
 - (iii) that has materially disrupted or is likely to materially disrupt the provision of a custodial service;
 - (b) any event, actual or imminent, other than an event of a serious or critical nature —
 - (i) that has jeopardised or is likely to jeopardise the safety or security of any person;
 - (ii) that has adversely affected or is likely to adversely affect the security, good order or management of the lock-up or court custody centre; or
 - (iii) that has materially disrupted or is likely to materially disrupt the provision of a custodial service.
- (2) The information to be recorded about an event referred to in subregulation (1) is as follows —
- (a) the date and time of the event;
 - (b) details of the place where the event occurred;
 - (c) the nature of the event;
 - (d) details of each person affected by the event;
 - (e) details of each person advised of the event and when the person was so advised.

8. Provision of information to persons admitted to lock-ups and court custody centres

- (1) The person in charge of a lock-up or court custody centre is to ensure that a person in custody, an intoxicated detainee or a person apprehended under the Mental Health Act who is admitted to the lock-up or court custody centre who so requests is, at a time convenient to the person in charge, informed of the following, as is relevant to the case —
- (a) the contents of the warrant or other instrument by which the person is held in custody and any

other condition relevant to the person's custody;

- (b) in the case of an intoxicated detainee, the reason for the person's detention;
 - (c) the anticipated date and time of the person's discharge from the lock-up or court custody centre;
 - (d) the details contained in the record referred to in regulation 9(2);
 - (e) in the case of an intoxicated detainee, the inventory kept under section 53C of the *Police Act 1892*.
- (2) The person in charge of a lock-up or court custody centre need not agree to a request made under subregulation (1) if the request appears to the person in charge to be vexatious.

9. Property of persons in custody and persons apprehended under the Mental Health Act

- (1) In this regulation —
“**person in custody**” includes a person apprehended under the Mental Health Act.
- (2) The person in charge of a lock-up or court custody centre is to record all the property in the possession of each person in custody at the lock-up or court custody centre as soon as practicable after the person's admission and that person is to be asked to sign the record as an acknowledgment that it is correct.
- (3) If a person in custody refuses to sign a record when asked to do so under subregulation (2), a person who has taken charge of the person in custody must inform the person in charge of the lock-up or court custody centre who is to endorse the record with a note of the refusal and any reason given by the person in custody for the refusal to sign.
- (4) Any property which, in the opinion of the person in charge of the lock-up or court custody centre, is of a perishable, dangerous or unhygienic nature may be destroyed or otherwise dealt with as ordered by the person in charge and a record of such order and action is to be noted on the record.

10. Visitors' property

- (1) The CEO is to ensure that procedures are in place for the provision of secure storage facilities —
 - (a) at court premises for property deposited for safekeeping under clause 5(1) of Schedule 1 to the Act; and

- (b) at lock-ups and court custody centres for property deposited for safekeeping under clause 21 of Schedule 2 to the Act.
- (2) If property referred to in subregulation (1)(a) or (b) is not collected within 24 hours of its deposit for safekeeping, the property may be moved to a place for secure storage other than the court premises or the lock-up or court custody centre where it was deposited.
- (3) Property referred to in subregulation (1)(a) or (b) that is uncollected, abandoned or unclaimed for 6 months may by order of the CEO be —
 - (a) sold at public auction;
 - (b) given to an association incorporated under the *Associations Incorporation Act 1987*; or
 - (c) destroyed or otherwise disposed of.
- (4) The CEO must on at least one occasion before a public auction is conducted under subregulation (3)(a) cause a notice to be published in the *Gazette* describing the property to be offered for sale and giving the time, date and place of the auction.
- (5) The net proceeds of an auction sale conducted under this regulation must be credited to the Consolidated Fund.

11. First aid and emergency medical care

- (1) The CEO is to ensure that procedures are in place for the provision of first aid and emergency medical care to persons in custody, intoxicated persons and persons apprehended under the Mental Health Act who are in a lock-up or a court custody centre.
- (2) If force has been used on a person for whom the CEO is responsible under section 10, 13, 15 or 16 of the Act and —
 - (a) the person in charge of the lock-up or court custody centre, if relevant; or
 - (b) in any other case, a person who has taken charge of the person,

believes on reasonable grounds that the application of force may have caused injury, the person referred to in paragraph (a) or (b) must, as soon as practicable, arrange for the provision of such first aid or emergency medical care as he or she believes on reasonable grounds to be required.

- (3) A person who arranges for the provision of first aid or emergency medical care under subregulation (1) or (2) must record the date and time and other details required by the CEO in a manner approved by the CEO.

12. Reporting death of person for whom CEO is responsible

- (1) If a person for whom the CEO is responsible under section 10, 13, 15 or 16 of the Act dies —
- (a) at a custodial place;
 - (b) while being moved between custodial places; or
 - (c) while escaping (or otherwise being absent) from a custodial place or during movement between custodial places,

then the relevant person is to report the death to the CEO as soon as practicable after becoming aware of the death.

- (2) In subregulation (1) —
“**relevant person**” means —

- (a) if the death occurred in a lock-up or court custody centre, the person in charge of the lock-up or court custody centre; or
- (b) if the death occurred in any other place, a person who had taken charge of the person for whom the CEO was responsible.

13. CEO to inform certain visitors about being searched

The CEO is to ensure that a sign is placed at the entrance of —

- (a) court premises informing persons of the effect of clauses 2(1) and (2) and 4(1) and (7) of Schedule 1 to the Act; and
- (b) each lock-up and court custody centre informing persons of the effect of clauses 18(1) and (2) and 20 of Schedule 2 to the Act.

14. Searches of persons in custody

A search under clause 8 of Schedule 2 to the Act of a person in custody —

- (a) may be conducted by one or more of the following means —
 - (i) by using an electronic or other device that is designed to locate property that is a subject of the search;
 - (ii) by visual inspection;
 - (iii) by frisk search;
 - (iv) by way of requiring the person to undress and searching the person visually and by hand;
 - (v) by way of a doctor or a nurse conducting an internal examination of

the person's body cavities but only if the person in charge of the lock-up or court custody centre has first obtained the approval of the CEO to proceed with the examination;

and

- (b) must be conducted expeditiously and with regard to decency and self-respect.

15. Searches of visitors to lock-ups and court custody centres

A search under clause 20 of Schedule 2 to the Act of a person in custody —

- (a) may be conducted by one or more of the following means —
 - (i) by using an electronic or other device that is designed to locate property that is a subject of the search;
 - (ii) by visual inspection;
 - (iii) by frisk search;
 - (iv) by way of requiring the person to undress and searching the person visually and by hand;
- and
- (b) must be conducted expeditiously and with regard to decency and self-respect.

Part 3 — Restraint of persons in custody

Division 1 — Preliminary

16. Definition

In this Division, unless the contrary intention appears —

“authorised person” means a person authorised to exercise a power set out in clause 12 of Schedule 2 to the Act;

“chemical agent” means a chemical agent of a kind referred to in regulation 19;

“holding restraint device” means a holding restraint device of a kind referred to in regulation 18;

“restraint device” means a holding restraint device or a temporary restraint device;

“temporary restraint device” means a temporary restraint device of a kind referred to in regulation 17.

Division 2 — Devices and substances**17. Temporary restraint devices**

- (1) The following kinds of temporary restraint devices can be used to establish control over any person in custody —
 - (a) handcuffs;
 - (b) velcro hobbles.
- (2) The following kinds of temporary restraint devices can be used to establish control over any adult person in custody except an adult who is a detainee —
 - (a) anklecuffs;
 - (b) body belts;
 - (c) rope hobbles;
 - (d) temporary plastic handcuffs (flexi-cuffs).

18. Holding restraint devices

- (1) The following kinds of holding restraint devices can be used to maintain control over any person in custody —
 - (a) handcuffs;
 - (b) body belts.
- (2) The following kinds of holding restraint devices can be used to maintain control over any adult person in custody except an adult who is a detainee —
 - (a) anklecuffs;
 - (b) security chain link (lockable by use of padlocks);
 - (c) mattresses (with restraining attachments).

19. Chemical agents

The following kinds of chemical agents can be used to establish control over any adult person in custody except an adult who is a detainee —

- (a) Oleoresin Capsicum (OC) commonly known as “pepper spray”;
- (b) Orthoclorobenzilemalonotrile (CS) commonly known as “tear gas”.

Division 3 — Manner in which devices and substances to be used or not to be used**20. All restraint devices and chemical agents**

A restraint device or a chemical agent —

- (a) must not be used on a person in custody by anyone other than an authorised person who has

successfully undergone a training programme approved by the CEO; and

- (b) must be used in accordance with the manufacturer's instructions and in accordance with the procedures set out in a training programme approved by the CEO.

21. All restraint devices

- (1) An authorised person must not use or improvise any device other than a restraint device to restrain a person in custody unless the authorised person believes on reasonable grounds that it is necessary to do so.
- (2) If a restraint device referred to in regulation 17(1) or 18(1) is used on a young person or on an adult who is a detainee the person must be kept under constant supervision during the period in which the device is used on the person.
- (3) If a restraint device has been used on a person in custody the person must be checked and monitored in accordance with the CEO's rules during the period in which the device is used on the person.
- (4) An authorised person must not restrain a person in custody by shackling or tying the person's hands and legs together behind the person's back.
- (5) An authorised person who is moving a person in custody between custodial places must not shackle or tie the person to a vehicle while the vehicle is in motion.
- (6) A person who checks or monitors a person in custody for the purposes of subregulation (3) must record information about the checks and monitoring as required by, and in a manner approved by, the CEO.

22. Temporary restraint devices

- (1) A temporary restraint device must not be used for any purpose other than to establish control over a person in custody.
- (2) If a temporary restraint device is used on a person in custody the person must be kept under constant supervision during the period in which the device is used on the person.
- (3) A person in custody on whom a temporary restraint device is used must not be placed in the prone position during the period in which the device is used on the person.

- (4) Temporary plastic handcuffs (flexi-cuffs) must not be used on a person in custody unless a cut-off tool is immediately available.
- (5) A temporary restraint device must not be used on a person in custody for longer than the time it takes to establish control over the person.

23. Chemical agents

- (1) A chemical agent must not be used for any purpose other than to establish control over a person in custody.
- (2) A chemical agent must not be used on a person in custody except by an authorised person who believes on reasonable grounds that no other means is immediately available to establish control over the person in custody.

Division 4 — Procedures

24. Use of restraints in lock-ups and court custody centres to be authorised or reported after emergencies

- (1) Subject to subregulation (2), an authorised person must not use a restraint device or a chemical agent on a person in custody at a lock-up or a court custody centre unless the person in charge of the lock-up or court custody centre has authorised the use of the restraint device or chemical agent.
- (2) An authorised person may, in the event of an emergency, use a restraint device or a chemical agent on a person in custody at a lock-up or a court custody centre without the prior approval of the person in charge of the lock-up or court custody centre.
- (3) If an authorised person uses a restraint device or a chemical agent on a person in custody in the circumstances referred to in subregulation (2) the authorised person must, as soon as practicable after the event, inform the person in charge of the lock-up or court custody centre of the use of the restraint device and the reasons for the use.
- (4) The authority to use, or the use of, a restraint device under this regulation must be in accordance with these regulations and any relevant CEO's rules.

25. Use of restraints in places other than lock-ups or court custody centres to be reported

- (1) An authorised person may use a restraint device or a chemical agent in accordance with these regulations and any relevant CEO's rules on a person in custody at

a custodial place other than a lock-up or a court custody centre or while the person in custody is being moved between custodial places.

- (2) If an authorised person uses a restraint device or a chemical agent on a person in custody in the circumstances referred to in subregulation (1) the authorised person must, as soon as practicable after the event, inform —
- (a) the superintendent of the prison or detention centre to which the person in custody is being returned or taken; or
 - (b) the person in charge of the lock-up or court custody centre to which the person in custody is being returned or taken,

of the use of the restraint device and the reasons for the use.

26. Review once control has been established by temporary restraint devices at lock-ups or court custody centres

- (1) If —
- (a) an authorised person uses a temporary restraint device on a person in custody at a lock-up or a court custody centre; and
 - (b) control over the person in custody has been established,

the person in charge of the lock-up or court custody centre is to review whether or not the use of a holding restraint device on the person in custody is required.

- (2) The person in charge of the lock-up or court custody centre is to record, in a manner approved by the CEO, the results of each review under subregulation (1).

27. Review once control has been established by temporary restraint devices at places other than lock-ups or court custody centres

- (1) If —
- (a) an authorised person uses a temporary restraint device on a person in custody at a custodial place other than a lock-up or a court custody centre or while the person in custody is being moved between custodial places; and
 - (b) control over the person in custody has been established,

the authorised person is to review whether or not the use of a holding restraint device on the person in custody is required.

- (2) An authorised person who conducts a review under subregulation (1) must, as soon as practicable after the review, inform —
- (a) the superintendent of the prison or detention centre to which the person in custody is being returned or taken; or
 - (b) the person in charge of the lock-up or court custody centre to which the person in custody is being returned or taken,
- of the results of the review.

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By Command of the Administrator,

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