JU302

Prisons Act 1981

Prisons Amendment Regulations 2020

SL 2020/251

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Prisons Amendment Regulations 2020*.

2. Commencement

These regulations come into operation as follows —

(a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;

(b) the rest of the regulations — on the day on which the *Prisons Amendment Act 2020* sections 4(1), 12, 19 and 23(1) come into operation.

3. Regulations amended

These regulations amend the *Prisons Regulations 1982*.

4. Part 3B inserted

After regulation 29 insert:

Part 3B — Inspection and disclosure of medical records and mandatory taking of blood or other body samples

Division 1 — Preliminary

29A. Terms used

In this Part —

affected prison officer means a prison officer to whom, the chief executive officer suspects on reasonable grounds, there has been a transfer of bodily fluid from a prisoner;

qualified person means —

(a) a medical officer; or

(b) a medical practitioner; or

(c) a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession; or

(d) the holder of —

(i) a Certificate III in Pathology Collection from a college as defined in the *Vocational Education and Training Act 1996* section 5(1); or

(ii) an equivalent qualification from an institution based in another State or Territory or overseas;

test authorisation notice has the meaning given in regulation 29F(2).

29B. COVID-19 prescribed as infectious disease

COVID-19 is prescribed for the purposes of paragraph (d) of the definition of ***infectious disease*** in section 3(1) of the Act.

Division 2 — Inspection and disclosure of medical records

29C. Inspection and disclosure of prisoner's medical records

(1) This regulation applies if the chief executive officer inspects a prisoner's medical records under section 46A(2)(a) of the Act.

(2) The chief executive officer must not disclose any information in the prisoner's medical records to any person other than the affected prison officer.

(3) For the purposes of subregulation (2), the only information that may be disclosed to the affected prison officer is information relating to the presence of an infectious disease.

(4) The affected prison officer must not disclose the information disclosed to them under subregulation (2), except in a manner that does not disclose the identity of the prisoner or enable the identity of the prisoner to be ascertained.

Penalty for this subregulation: a fine of $6 000.

29D. Chief executive officer may direct medical officer to provide report on presence of infectious disease

For the purposes of assisting with an inspection under section 46A(2)(a) of the Act, the chief executive officer may direct a medical officer to —

(a) review a prisoner's medical records to find out whether the prisoner has an infectious disease; and

(b) provide a report to the chief executive officer on the results of the review.

Division 3 — Mandatory testing of blood or other body samples

29E. Duty to notify of suspected transfer of bodily fluid

A prison officer who suspects on reasonable grounds that there has been a transfer of bodily fluid from a prisoner to a prison officer must notify the chief executive officer.

29F. Test authorisation notice

(1) This regulation applies if the chief executive officer requires a prisoner to submit themselves for the purpose of having a blood or other body sample taken under section 46A(2)(b) of the Act.

(2) Before the sample is taken, the chief executive officer must give to the prisoner a notice (a ***test authorisation notice***), in an approved form, that contains —

(a) the name of the prisoner; and

(b) the type of sample to be taken; and

(c) the infectious disease for which the sample is to be tested; and

(d) a statement including the following —

(i) the chief executive officer suspects on reasonable grounds that there has been a transfer of bodily fluid from the prisoner to a prison officer;

(ii) that a prison officer may take the prisoner to a place (including a place within a prison) that the chief executive officer considers has appropriate facilities for the taking of the sample;

(iii) that a qualified person at the place may take the sample;

(iv) that such force as is reasonably necessary in the circumstances may be used to take the sample;

(v) that the prisoner must submit themselves for the purpose of having the sample taken;

(vi) that the prisoner commits an aggravated prison offence if the prisoner fails to submit themselves for the purpose of having the sample taken.

(3) The content of the test authorisation notice must, at the time when the notice is given to the prisoner, be explained to the prisoner in language most likely to be understood by the prisoner.

29G. Effect of test authorisation notice

A test authorisation notice given to a prisoner under regulation 29F(2) —

(a) confers the power referred to in regulation 29F(2)(d)(ii); and

(b) authorises —

(i) a sample of a type specified in the notice to be taken from the prisoner; and

(ii) the sample to be tested for the presence of the infectious disease named in the notice.

29H. How samples are to be taken

(1) A prison officer executing a test authorisation notice may ask a qualified person to take from the prisoner a sample of a type specified in the notice.

(2) The qualified person must not take the sample under subregulation (1) unless the qualified person is given a copy of the test authorisation notice.

(3) Subject to section 46A(3) of the Act, in taking the sample, the qualified person may ask another person to give any reasonably necessary help.

29I. Samples to be sealed, labelled and delivered to approved organisation

(1) A prison officer executing a test authorisation notice must ensure that a sample taken under the notice is sealed in a container marked or labelled in the presence of the prisoner and the prison officer with —

(a) the name of the prisoner; and

(b) the type of sample taken; and

(c) the infectious disease for which the sample is to be tested; and

(d) the name of the qualified person who took the sample; and

(e) the time and date when the sample was taken.

(2) The chief executive officer may —

(a) approve an organisation to test the sample; and

(b) authorise the delivery of the sample to the organisation.

29J. Testing of samples

The organisation referred to in regulation 29I(2)(a) must —

(a) test the sample for the presence of the infectious disease named in the test authorisation notice; and

(b) notify the chief executive officer of the results of the test.

29K. Disclosure of results of test

(1) The organisation referred to in regulation 29I(2)(a) must ensure that the results of any test done on the sample are not disclosed by the organisation or the employees of the organisation to any person other than the chief executive officer.

(2) The chief executive officer must not disclose the test results to any person other than —

(a) the affected prison officer; or

(b) a medical officer responsible for the medical care and treatment of the prisoner.

(3) The affected prison officer must not disclose the test results disclosed to them under subregulation (2)(a) except in a manner that does not disclose the identity of the prisoner or enable the identity of the prisoner to be ascertained.

Penalty for this subregulation: a fine of $6 000.

(4) The medical officer —

(a) must not disclose the test results disclosed to them under subregulation (2)(b) to any person other than the prisoner; and

(b) must record the test results on the prisoner's medical records held by the Department.

(5) This regulation does not prevent the disclosure of a test result if the disclosure is authorised or required to be made under a written law apart from this regulation.

29L. Admissibility of results of test

The results of any test done on a sample taken from a prisoner under this Part is not admissible in evidence in any criminal proceeding against the prisoner.

V. MOLAN, Clerk of the Executive Council.