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YOUNG OFFENDERS ACT 1994

**YOUNG OFFENDERS
REGULATIONS 1995**

WESTERN AUSTRALIA

**YOUNG OFFENDERS REGULATIONS
1995**

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SCHEDULE 1

YOUNG OFFENDERS ACT 1994
YOUNG OFFENDERS REGULATIONS 1995

Made by The Lieutenant-Governor and deputy of the Governor in Executive Council.

PART 1 — PRELIMINARY

Citation

1. These regulations may be cited as the *Young Offenders Regulations 1995*.

Interpretation

2. In these regulations unless the contrary intention appears —

“**medical practitioner**” means a medical practitioner registered under the *Medical Act 1894*;

“**special detention centre**” means a detention centre referred to in regulation 34;

“**supervising officer**” means —

- (a) in relation to a youth community based order, an officer of the Department assigned to be the supervising officer under section 77 of the Act; or
- (b) in relation to a conditional release order, an officer of the Department assigned to be the supervising officer under section 108 of the Act;

“**the overseer**”, in relation to an offender, means the person assigned to oversee the offender under regulation 7.

**PART 2 — FORM OF WRITTEN STATEMENT GIVEN TO A YOUNG
PERSON NOT REPRESENTED BY A LEGAL PRACTITIONER**

**Form of written statement given to a young person not represented
by a legal practitioner**

3. The form of the written statement that the court is required to give a young person under section 44 (2) (b) of the Act is set out in Schedule 1.

**PART 3 — YOUTH COMMUNITY BASED ORDERS AND INTENSIVE
YOUTH SUPERVISION ORDERS**

Division 1 — Overseers

Interpretation

4. In this Division, “community work conditions” means community work conditions imposed by way of a youth community based order or an intensive youth supervision order.

Appointment of overseers

5. (1) Under section 11 of the Act the Minister may appoint persons to be overseers for the purposes of overseeing offenders required to perform work under community work conditions.

(2) The terms and conditions of an appointment made under this regulation are as determined by the Minister and stated in the instrument of appointment.

(3) The Minister may at any time revoke the appointment of an overseer.

Compensation for injury

6. If a person is appointed as an overseer on an honorary basis —

- (a) the person is, while working for the purposes of the Act, to be regarded for the purposes of the *Workers' Compensation and Rehabilitation Act 1981* as a worker employed by the Crown; and
- (b) for the purposes of the *Workers' Compensation and Rehabilitation Act 1981*, the person's weekly earnings are to be taken to be the amount that the Minister considers is reasonable in the circumstances.

Assignment of overseer to offender

7. The chief executive officer, or a person authorized by the chief executive officer for the purpose, is to assign —

- (a) a person appointed to be an overseer in accordance with regulation 5 (1); or
- (b) an officer of the Department,

to oversee an offender when performing work under community work conditions.

Overseer not to benefit from work performed under community work conditions

8. An overseer is not to oversee an offender when performing work under community service conditions if the overseer stands to benefit personally from the performance of the work otherwise than generally as a member of the community or as a member of a group within the community.

Division 2 — Taking of body samples

Taking of body samples

9. (1) If a youth community based order or an intensive youth supervision order is made on the condition or undertaking that the offender submit to the taking of a body sample, and the chief executive officer requires the offender to submit to the taking of a body sample —

- (a) if the body sample to be taken is breath, the breath test is to be conducted by means of an apparatus of an approved kind; or
- (b) if the body sample to be taken is blood or urine, the blood or urine taken is to be labelled with —
 - (i) the name of the offender;
 - (ii) the type of the sample;
 - (iii) the name of the person who took the sample; and
 - (iv) the date and time that the sample was taken.

(2) A body sample that is to be taken in the form of blood is to be taken by a medical practitioner.

(3) The chief executive officer 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.

(4) In subregulation (1) (a), “approved” means approved by the chief executive officer.

Division 3 — Attendance conditions

Proposed agenda

10. When a report that attendance conditions would be suitable for an offender is submitted to the court, the proposed agenda submitted to the court under section 75 of the Act is to specify —

- (a) proposals relating to the educational, rehabilitative or other course in which the offender is to participate;
- (b) details of the days and times when the course operates; and
- (c) proposals relating to the aggregate number of hours during which the offender is to participate in the course.

Division 4 — Community work conditions

Interpretation

11. In this Division —

“drug” means a prohibited drug, or prohibited plant, within the meaning of the *Misuse of Drugs Act 1981*;

“work” means work required to be performed in accordance with community work conditions imposed by way of a youth community based order under section 73 (1) (b) of the Act.

Offender subject to community work conditions

12. An offender performing work —

- (a) is to comply with any reasonable direction given by the overseer; and
- (b) is to wear any safety clothing or equipment supplied to the offender for the purpose of performing the work.

Maximum number of hours to be worked in any day

13. Unless the supervising officer and offender both consent to the requirement, an offender performing work is not to be required to perform more than 6 hours of work in any day.

Safe working environment and safe manner of work

14. The supervising officer is to take any measures that are practicable to ensure that an offender performing work —

- (a) is not exposed to hazards at the place where the work is being performed; and
- (b) performs the work in a manner that does not expose the offender or any other person to hazards.

Authorized breaks counted as work

15. If an offender performing work takes a break authorized by the supervising officer or overseer, the period of the break is to be taken to be a period of work in computing the number of hours of work performed by the offender.

Certain breaks allowed and counted as work

16. (1) An offender performing work is to be allowed during a normal working day —

- (a) a break of 15 minutes in the morning;

- (b) a break of 45 minutes for lunch; and
- (c) a break of 15 minutes in the afternoon.

(2) The period of a break taken by an offender under subregulation (1) is to be taken to be a period of work in computing the number of hours of work performed by the offender.

Offender not required to work if supervising officer or overseer fails to arrive unless alternative arrangements made

17. (1) If —

- (a) an offender attends to perform work at a time and place specified in a direction given to the offender by the supervising officer; and
- (b) neither the supervising officer nor overseer arrives at the specified place within one hour after the specified time,

the offender is not required to perform work on that day unless other arrangements are made for an appropriate person to oversee the work to be performed by the offender at the specified place or another place.

(2) If an offender does not perform work because of circumstances referred to in subregulation (1), the period that the offender would have worked if not for those circumstances is to be taken to be a period of work in computing the number of hours of work performed by the offender.

Certain substances prohibited

18. An offender is not to bring to, or possess at, the place where the offender is performing work any alcohol, drug, toluene or any other substance capable of influencing a person's fitness to perform work.

Offender under the influence of alcohol, etc.

19. (1) If the overseer considers that an offender is unfit to perform work because the offender is under the influence of alcohol, a drug, toluene or any other substance capable of influencing a person's fitness to perform work, the overseer —

- (a) is to direct the offender not to work; and
- (b) is to report the matter to the supervising officer.

(2) Any period during which an offender is directed not to work under subregulation (1) is not to be taken to be a period of work in computing the number of hours of work performed by the offender.

Offender not to possess weapon, and confiscation

20. (1) An offender is not to bring a weapon to, or possess a weapon at, the place where the offender is performing work.

(2) During the period that the work is being performed, the supervising officer or overseer may take possession of a weapon that an offender brings to, or possesses at, the place where the offender is performing work.

Offender not to drive vehicle unless authorized

21. An offender is not to drive or ride in or on a vehicle at the place where the offender is performing work unless authorized to do so by the supervising officer or overseer.

Offender may be excused from work

22. (1) The supervising officer or, with the approval of the supervising officer, the overseer may excuse an offender from performing work if the supervising officer or overseer, as the case requires, is satisfied that there are reasonable grounds for doing so.

(2) Any period during which an offender is excused from work under subregulation (1) is not to be taken to be a period of work in computing the number of hours of work performed by the offender.

Offender ill or injured while performing work

23. (1) If an offender becomes ill or is injured while performing work, the overseer —

- (a) is immediately to notify the supervising officer of the illness or injury; and
- (b) in the case of injury, is within 24 hours to provide to the supervising officer a written report of the circumstances in which the injury occurred.

(2) The overseer may excuse an offender who becomes ill or is injured while performing work from working for any period during the remainder of the day.

(3) Any period during which an offender is excused from performing work under subregulation (1) is to be taken to be a period of work in computing the number of hours of work performed by the offender.

Supervising officer to notify responsible adult

24. If an offender is excused from performing work under regulation 22 or 23, the supervising officer is to take reasonable steps to notify a responsible adult accordingly.

Offender unable to attend to perform work because of illness

25. (1) If, because of illness, an offender is unable to attend to perform work at a time and place specified in a direction given to the offender by the supervising officer, the offender is to notify the supervising officer as soon as practicable within 48 hours after the specified time.

(2) An offender —

- (a) who notifies the supervising officer under subregulation (1); and
- (b) who, within 3 days after the specified time, provides to the supervising officer a certificate signed by a medical practitioner certifying that, because of illness, the offender was unable to perform work for a period specified in the certificate that includes the specified time,

is to be taken to have been excused from attending to perform work as required by the direction referred to in subregulation (1).

(3) Any period during which an offender is unable to attend to perform work because of illness is not to be taken to be a period of work in computing the number of hours of work performed by the offender.

Division 5 — Supervision conditions

Limits on the reporting requirements of supervision conditions

26. Supervision conditions imposed on an offender by way of an order made under section 73 (1) (c) of the Act are not to require the offender to report more than once each week.

Requirement to report for offender who lives in remote area of the State

27. If —

- (a) the court is considering making an order under section 73 (1) (c) that imposes supervision conditions on an offender who lives in a remote area of the State; and
- (b) the conditions being considered include a requirement for the offender to report,

the court is to take into account the fact that the offender lives in a remote area of the State in determining the appropriate requirement to report.

Division 6 — Intensive youth supervision orders without detention

Interpretation

28. In this Division, “supervision order” means an intensive youth supervision order made by a court without imposing a sentence of detention.

Application of Divisions 3, 4 and 5 to supervision orders

29. Without limiting section 100 of the Act and unless otherwise provided in this Division, Divisions 3, 4 and 5 apply, with necessary modifications, to conditions imposed by way of a supervision order as if it were a youth community based order.

Limits on the reporting requirements of supervision conditions

30. Supervision conditions imposed on an offender under section 73 (1) (c) of the Act (as read with section 100 of the Act) by way of a supervision order are not to require the offender to report more than 3 times each week.

Offender to inform supervising officer of change in address within 48 hours

31. An offender who changes address while subject to a supervision order is to comply with section 78 (c) of the Act (as read with section 100 of the Act) within 48 hours after the change in the offender's address.

Division 7 — Conditional release orders

Application of Division 4 to offender released under conditional release order

32. Division 4 (other than regulation 25) applies, with necessary modifications, to an offender released under a conditional release order, within the meaning of section 101 of the Act, as if a reference in the Division to the performance of work included a reference to the performance of work, or to complying with any other obligation, in accordance with conditions imposed on an offender by way of a conditional release order.

Offender unable to attend to perform work because of illness

33. (1) If, because of illness, an offender is unable to attend to perform work at a time and place specified in a direction given to the offender by the supervising officer, the offender is to notify the supervising officer as soon as practicable within 24 hours after the specified time.

(2) An offender —

- (a) who notifies the supervising officer under subregulation (1);
- (b) who, within 3 days after the specified time, provides to the supervising officer a certificate signed by a medical practitioner certifying that, because of illness, the offender was unable to perform work for a period specified in the certificate that includes the specified time; and
- (c) who, if so required by the chief executive officer under subregulation (3), is examined by a medical practitioner who verifies that the offender was ill at the specified time,

is to be taken to have been excused from attending to perform work as required by the direction referred to in subregulation (1).

(3) If an offender notifies the supervising officer under subregulation (1), the chief executive officer may require the offender to be examined by a medical practitioner, nominated by the chief executive officer, to verify that the offender was ill at the specified time.

(4) Any period during which an offender is unable to attend to perform work because of illness is not to be taken to be a period of work in computing the number of hours of work performed by the offender.

(5) In this regulation, "work" means work required to be performed, or any other obligation required to be complied with, in accordance with conditions imposed by way of a conditional release order.

PART 4 — SPECIAL DETENTION CENTRES

Detention centres established and operated as special detention centres

34. (1) Detention centres to be known as special detention centres may be established and operated where detainees are required to undertake designated work and other developmental programmes in a structured and disciplined environment in order to attain predetermined goals.

(2) In attaining predetermined goals, detainees in special detention centres are required to undertake activities that demonstrate progress in their self-discipline, work performance and capacity to participate in developmental programmes.

**PART 5 — PRESCRIBED OFFENCES UNDER SECTION 119
OF THE ACT**

Prescribed offences under section 119 of the Act

35. (1) Any offence, other than an offence that is a prescribed offence for the purposes of section 119 (2) (b) of the Act, is a prescribed offence for the purposes of section 119 (1) of the Act.

(2) An offence is a prescribed offence for the purposes of section 119 (2) (b) of the Act if it is —

- (a) a Schedule 1 offence within the meaning of the Act other than —
 - (i) an offence under the *Road Traffic Act 1974*; or
 - (ii) the offence of counselling or procuring the commission of an offence under the *Road Traffic Act 1974*;

or

- (b) a Schedule 2 offence within the meaning of the Act.

**PART 6 — HEARING AND DETERMINATION OF
DETENTION OFFENCES**

Interpretation

36. In this Part, “superintendent or visiting justice” means the superintendent or visiting justice hearing and determining a charge of a detention offence.

Charge of detention offence

37. (1) If a charge of a detention offence is made under section 171 of the Act, the charge is to be made in writing and is to contain —

- (a) the name of the detainee alleged to have committed the offence;
- (b) the date, time and place of the alleged offence;
- (c) the details of any person assaulted or any property broken, damaged or destroyed in the commission of the alleged offence;
- (d) a description of any injury or damage resulting from the alleged offence; and
- (e) a brief summary of the alleged circumstances of the offence.

(2) A copy of the charge is to be made available to the detainee alleged to have committed the offence a reasonable time before the hearing of the charge.

Notification of hearing

38. (1) If —

- (a) a detainee is charged with a detention offence; and
- (b) a date is set for the hearing of the charge,

the superintendent is to take reasonable steps to notify a responsible adult of the date set for the hearing and of the right of the responsible adult to be present at the hearing.

(2) It is sufficient compliance with subregulation (1) if the superintendent causes written notification of the hearing to be forwarded to the last address recorded at the detention centre for the responsible adult.

Representation of detainee

39. (1) The superintendent or visiting justice is to permit a suitable person, other than a legal practitioner, nominated or agreed to by the detainee charged to assist and represent the detainee at the hearing of the charge.

(2) It is for the superintendent or visiting justice to determine whether a person nominated or agreed to under subregulation (1) is a suitable person for the purposes of that subregulation.

Procedure

40. (1) Subject to subregulation (2), the procedure that applies to the hearing and determination of a charge of a detention offence is —

- (a) the prosecuting officer is to state the case against the detainee and call any witnesses in support of the charge;
- (b) the superintendent or visiting justice may take evidence on oath, affirmation or otherwise at his or her discretion;
- (c) the prosecuting officer is to conduct the examination in chief of each witness and the detainee or the detainee's representative may cross-examine each witness;
- (d) the prosecuting officer may re-examine each witness on matters arising out of cross-examination;
- (e) the prosecuting officer is then to close his or her case; and
- (f) the detainee is then to give evidence on his or her own behalf and call any witnesses, and paragraphs (c), (d) and (e) are to apply with necessary modifications.

(2) The superintendent or visiting justice may at the request of the detainee or the detainee's representative adjourn the hearing of the charge to permit the detainee to consider the charge more properly and prepare a defence to it.

(3) The superintendent or visiting justice —

- (a) is to conduct proceedings expeditiously and without undue adjournment or delay;
- (b) is to keep or cause to be kept an accurate 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.

(4) The prosecuting officer and the detainee or the detainee's representative may question a witness called and questioned under subregulation (3) (d).

PART 7 — GRATUITIES***Division 1 — Special detention centres*****Classification of activities undertaken by detainees in special detention centres**

41. (1) For the purpose of crediting gratuities to detainees in special detention centres, the activities undertaken by detainees are to be classified by the chief executive officer as —

- (a) level 1 activities, in respect of activities that are at times undertaken without supervision and activities that are undertaken in the local community and require special aptitude and diligence;
- (b) level 2 activities, in respect of activities that are at times undertaken under general supervision in the local community and activities that require above average aptitude and diligence; or
- (c) level 3 activities, in respect of activities that are undertaken under direct supervision and activities that require average aptitude and diligence.

(2) The level at which activities are classified is as the chief executive officer considers appropriate, having regard to the matters set out in subregulation (1) (a), (b) and (c).

Gratuities credited to a detainee in special detention centre

42. The gratuities that may be credited to a detainee in a special detention centre are —

- (a) for undertaking level 1 activities, \$35.00 each week;
- (b) for undertaking level 2 activities, \$25.00 each week; or
- (c) for undertaking level 3 activities, \$15.00 each week.

Division 2 — Detention centres other than special detention centres**Gratuities credited to a detainee in detention centre that is not a special detention centre**

43. (1) Subject to subregulations (2) and (3), the gratuities that may be credited to a detainee are —

- (a) for a detainee in Rangeview Remand Centre, \$14.00 each week;
or
- (b) for a detainee in any other detention centre, \$15.00 each week.

(2) The superintendent may direct that, because of the nature of the activities that a detainee is required to undertake, the gratuities credited to the detainee be increased, as the superintendent considers appropriate, for the period during which the detainee undertakes those activities.

(3) Gratuities are not to be credited to a detainee who is detained for less than 3 days.

(4) In this regulation, "detainee" means a detainee detained in a detention centre other than a special detention centre.

Division 3 — General

Superintendent may direct gratuities be withheld or reduced

44. (1) If a detainee refuses to undertake activities as directed, the superintendent may direct that no gratuities be credited to the detainee for the period during which the detainee refuses to undertake those activities.

(2) If the performance of activities undertaken by a detainee at a detention centre is, in the opinion of the superintendent, unsatisfactory, the superintendent may direct that the gratuities credited to the detainee be reduced, as the superintendent considers appropriate, for the period during which the performance of those activities is unsatisfactory.

(3) If the superintendent gives a direction under subregulation (1) or (2), the superintendent is to maintain a record of the reasons for giving the direction.

Superintendent may direct deductions from gratuities

45. If a detainee causes any property of the State in a detention centre to be lost, broken, damaged or destroyed, the superintendent may direct that an amount that the superintendent considers appropriate —

- (a) be deducted from the gratuities that are credited to the detainee;
and
- (b) be paid towards the repair or replacement of the property.

Superintendent may direct when gratuities are to be credited

46. The superintendent may direct that gratuities be credited to detainees at times that the superintendent considers appropriate.

PART 8 — CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL

Division 1 — Consequential amendments

Child Welfare Regulations 1977 amended

47. The *Child Welfare Regulations 1977** are amended —

- (a) in regulation 3, by deleting the definitions of “approved form” and “Chairman”; and
- (b) by repealing Parts II, III and IIIA.

[* *Published in Gazette of 6 December 1977 at pp. 4471-98.*
For amendments to 30 January 1995 see 1993 Index to Legislation of Western Australia, Table 4, pp. 33-4.]

Child Welfare (Detention Centres) Regulations 1989 repealed

48. The *Child Welfare (Detention Centres) Regulations 1989* are repealed.

Division 2 — Transitional

Isolation in cell in detention centre under Child Welfare (Detention Centres) Regulations 1989

49. (1) If immediately before the commencement of these regulations a detainee is isolated in a cell in a detention centre under regulation 42 of the repealed regulations, that regulation, despite regulation 48 of these regulations, continues to apply to and in relation to the period of isolation of the detainee until the expiry of that period.

(2) In subregulation (1) —

“**detention centre**” means a detention centre declared under the provisions of the *Child Welfare Act 1947* as in force immediately before the commencement of Part 11 of the *Young Offenders Act 1994*;

“**repealed regulations**” means the *Child Welfare (Detention Centres) Regulations 1989* as in force immediately before the commencement of regulation 48.

SCHEDULE 1

[Regulation 3]

**WRITTEN STATEMENT TO BE GIVEN BY THE COURT TO A YOUNG
PERSON NOT REPRESENTED BY A LEGAL PRACTITIONER**

WHAT TO DO IF YOU DON'T HAVE A LAWYER

1. It is your right to have a lawyer represent you in court.
2. There may be a free lawyer in the courthouse, known as the "duty lawyer" or "duty counsel". You may seek their assistance if you wish.
3. If there is no lawyer for you at the court, you may ask to have your case put off ("adjourned") to another day so that you can get legal advice.
4. The Legal Aid Commission and the Aboriginal Legal Service provide free legal services to young people. There may also be other free legal services in your area. To get their address and telephone number, ask the court staff for help.

By The Lieutenant-Governor and deputy of the Governor's Command,

M. C. WAUCHOPE, Clerk of the Council.

