
CORRECTIVE SERVICES

CS301*

Prisons Act 1981

Prisons Amendment Regulations 2015

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Prisons Amendment Regulations 2015*.

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 *Custodial Legislation (Officers Discipline) Amendment Act 2014* section 7 comes into operation.

3. Regulations amended

These regulations amend the *Prisons Regulations 1982*.

4. Part IV replaced

Delete Part IV and insert:

Part IV — Removal of prison officers

30. Terms used

In this Part, unless the contrary intention appears —

inspection list means a written list of relevant material gathered by a review officer for the purpose of an investigation under regulation 32B;

notice means a notice given under section 102(1) of the Act;

prison officer has the same meaning as in Part X Division 3 of the Act;

privilege means —

- (a) a privilege that would attach to a document prepared for the purpose of pending or contemplated legal proceedings or in connection with the obtaining or giving of legal advice; or

- (b) immunity from production of a document or any material where the production would be against the public interest; or
- (c) immunity from production of a document or any material under a written law;

relevant material means any material relevant to any issue identified in a summary of investigation concerning the prison officer referred to in regulation 32A(1);

removal action has the meaning given in section 101 of the Act;

review officer means a person appointed under regulation 32A;

submission period has the meaning given in section 102(2) of the Act;

suitability to continue as a prison officer has the meaning given in section 99 of the Act;

summary of investigation means a written report that includes reference to relevant material gathered by the review officer for the purpose of an investigation under regulation 32B.

31. Application of this Part

This Part applies if, under Part X Division 3 of the Act, the chief executive officer —

- (a) is contemplating taking removal action; or
- (b) has decided to take removal action; or
- (c) has taken removal action.

32A. Appointment of review officer

- (1) If the chief executive officer is contemplating taking removal action in relation to a prison officer, the chief executive officer may appoint a review officer in relation to that prison officer.
- (2) A person must not be appointed as a review officer in relation to a prison officer if that person has been directly involved in —
 - (a) a previous investigation that resulted in information being supplied to the chief executive officer regarding that prison officer's suitability to continue as a prison officer; or
 - (b) a previous investigation of a suspected breach of discipline by that prison officer that resulted in —
 - (i) a decision under the *Public Sector Management Act 1994* section 81(1)(a); and

(ii) disciplinary action as defined in section 80A of that Act;

or

- (c) a previous investigation that resulted in a charge being laid against that prison officer under section 99 of the Act as in force immediately before the commencement of the *Custodial Legislation (Officers Discipline) Amendment Act 2014* section 7; or
- (d) any decision-making relating to an investigation referred to in paragraph (a), (b) or (c).

32B. Role of review officer

- (1) The review officer must conduct an investigation into the prison officer referred to in regulation 32A(1) and prepare —
- (a) a summary of investigation; and
- (b) an inspection list.
- (2) The review officer must identify in the inspection list any document in respect of which privilege is claimed and state in that inspection list each ground on which the privilege is claimed.
- (3) The review officer is subject to the direction of the chief executive officer in conducting the investigation and preparing the summary of investigation and inspection list.

32C. Provision of material to chief executive officer

- (1) When the review officer completes the investigation, the review officer must provide the chief executive officer with —
- (a) the summary of investigation; and
- (b) the inspection list; and
- (c) any material referred to in the inspection list that the review officer considers appropriate.
- (2) Before the chief executive officer decides whether or not to give a notice, the chief executive officer may cause further material, including written reports, to be provided to the chief executive officer.
- (3) The chief executive officer may direct the review officer to —
- (a) conduct a further investigation in accordance with regulation 32B and subregulation (1); and

- (b) prepare and submit to the chief executive officer —
 - (i) a supplementary summary of investigation; and
 - (ii) a supplementary inspection list.
- (4) The chief executive officer's direction may include a direction as to the matters to be investigated and included in the supplementary summary of investigation.

32D. Notice of loss of confidence

- (1) In addition to the grounds to be set out under section 102(1) of the Act, a notice must —
 - (a) set out the particular conduct or behaviour on which the chief executive officer's loss of confidence is based; and
 - (b) advise the prison officer that during the submission period the prison officer may make written submissions to the chief executive officer in respect of the grounds on which the chief executive officer has lost confidence in the prison officer's suitability to continue as a prison officer.
- (2) When the chief executive officer gives the notice to a prison officer, the chief executive officer must also provide to the prison officer a copy of the following documents relating to the decision to give the notice —
 - (a) any summary of investigation and any supplementary summary of investigation;
 - (b) any inspection list and any supplementary inspection list;
 - (c) any document examined and taken into account in deciding to give the notice.
- (3) As soon as practicable after the chief executive officer gives the notice to a prison officer, the chief executive officer must make available to the prison officer for inspection any other material examined and taken into account in deciding to give the notice.
- (4) Subregulations (2) and (3) do not apply to any document or material that is privileged.
- (5) If the chief executive officer does not provide the prison officer with a copy of a document or make available to the prison officer for inspection any other material because it is privileged, the chief executive officer must advise the prison officer of each ground on which the document or material is privileged.

32E. Access to material

- (1) During the submission period the chief executive officer must permit a prison officer who has been given a notice or the prison officer's legal representative to inspect any material referred to in the inspection list or any supplementary inspection list that is not privileged.
- (2) A prison officer who has been given a notice may make a request in writing to the chief executive officer for permission to inspect any material, other than material provided to the prison officer under these regulations, that —
 - (a) the prison officer has seen or created in the course of his or her duties as a prison officer; and
 - (b) is relevant to any issue concerning the prison officer referred to in the notice.
- (3) The request must be made as soon as practicable after, and in any event within 14 days after, the day on which the prison officer was given the notice.
- (4) During the submission period the chief executive officer must as far as practicable permit the prison officer or the prison officer's legal representative to inspect the material the subject of a request under subregulation (2).

32F. Chief executive officer's assessment of prison officer's submissions

- (1) If the chief executive officer receives submissions from a prison officer under section 102(2) of the Act, the chief executive officer may cause further material, including written reports, to be provided to the chief executive officer.
- (2) The chief executive officer must where practicable within 21 days, and in any event within 42 days, after the end of the submission period, decide whether or not a period for further investigation or analysis of any submissions of the prison officer is necessary.
- (3) If the chief executive officer decides that a further period for investigation or analysis is required, the chief executive officer must endeavour to cause that investigation or analysis to be completed within 7 weeks after receiving the prison officer's submissions.
- (4) If the further investigation or analysis cannot be completed within the period referred to in

subregulation (3), the chief executive officer must give the prison officer a notice stating —

- (a) the reason for the further investigation or analysis; and
 - (b) the time period required to complete the further investigation or analysis; and
 - (c) the reason for the need for that time period.
- (5) Despite deciding under section 102(3)(a) of the Act not to take removal action, the chief executive officer may decide that the prison officer's performance or conduct warrants other action being taken in relation to the prison officer under the Act or these regulations.

32G. Further ground for removal

- (1) If the chief executive officer concludes that he or she has lost confidence in the prison officer's suitability to continue as a prison officer on a ground other than a ground set out in the notice the chief executive officer must —
- (a) give the prison officer notice in writing of the further ground; and
 - (b) provide to the prison officer a copy of any document and make available for inspection any other material that has been examined and taken into account by the chief executive officer under this Part with the exception of —
 - (i) a copy of a document already given to the prison officer or any material already made available for inspection by the prison officer under this Part; and
 - (ii) a privileged document or material;and
 - (c) allow the prison officer a specified period to provide a response to the further ground.
- (2) For the purpose of subregulation (1)(c), the specified period is —
- (a) a period of 21 days beginning on the later of the following days —
 - (i) the day on which the prison officer is given the notice of the further ground;
 - (ii) the day on which the prison officer is provided with copies of all of the documents required to be provided under subregulation (1)(b);

- (iii) the day on which all material required to be made available has been made available to the prison officer for inspection under subregulation (1)(b);
 - or
 - (b) any longer period approved by the chief executive officer before the end of the period referred to in paragraph (a), on —
 - (i) an application made by the prison officer; or
 - (ii) the initiative of the chief executive officer.
- (3) If the chief executive officer does not provide the prison officer with a copy of a document or make available for inspection any other material that was examined and taken into account by the chief executive officer under this Part because it is privileged, the chief executive officer must advise the prison officer of each ground on which the document or material is privileged.
- (4) Subregulation (3) does not apply if the chief executive officer has already advised the prison officer under this Part of each ground on which the document or material is privileged.

32H. Notice of chief executive officer's decision on removal action and material relied on

- (1) As far as practicable, a decision notice as defined in section 102(3)(b) of the Act must be given to the prison officer within 7 days after the chief executive officer has decided to take removal action.
- (2) The chief executive officer is not required to comply with section 102(6) of the Act to the extent that —
 - (a) the chief executive officer has already provided the prison officer with a copy of the document or made available to the prison officer for inspection any other material under this Part; or
 - (b) the document or material is privileged.
- (3) If the chief executive officer does not comply with section 102(6) of the Act because the document or material is privileged the chief executive officer must advise the prison officer of each ground on which the document or material is privileged.
- (4) Subregulation (3) does not apply if the chief executive officer has already advised the prison officer under this Part of each ground on which the document or material is privileged.

32I. Service of notices or documents

- (1) If a notice or document is required to be given to a prison officer under Part X Division 3 of the Act or this Part, service may be effected on the prison officer —
 - (a) by delivering it to the prison officer personally; or
 - (b) by properly addressing and posting it (by prepaid post) as a letter to the usual or last known residential address of the prison officer or address for service given by the prison officer in writing to the chief executive officer; or
 - (c) by leaving it for the prison officer at the prison officer's usual or last known residential address; or
 - (d) by leaving it for the prison officer at an address for service given by the prison officer in writing to the chief executive officer.
- (2) Service under subregulation (1) is to be taken to be effected —
 - (a) in the case of service under subregulation (1)(a), at the time of delivery to the prison officer; or
 - (b) in the case of service under subregulation (1)(b), at the time when the letter would have been delivered in the ordinary course of post; or
 - (c) in the case of service under subregulation (1)(c), at the time it is left at the residential address; or
 - (d) in the case of service under subregulation (1)(d), at the time it is left at the address given to the chief executive officer.

32J. Application

Regulations 31 to 32H do not apply where a prison officer is discharged under regulation 5.

32K. Restriction on suspending prison officer's pay

During any period in which consideration is being given to a prison officer's suitability to continue as a prison officer, the chief executive officer cannot suspend the prison officer's pay.

K. H. ANDREWS, Clerk of the Executive Council.