

TASMANIA

CORRECTIONS REGULATIONS 2018
STATUTORY RULES 2018, No. 44

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SCHEDULE 1 – LEGISLATION RESCINDED

CORRECTIONS REGULATIONS 2018

I, the Administrator in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Corrections Act 1997*.

Dated 17 July 2018.

H. M. WOOD
Administrator

By Her Excellency's Command,

ELISE ARCHER
Minister for Corrections

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the
Corrections Regulations 2018.

2. Commencement

These regulations take effect on the day on
which their making is notified in the *Gazette*.

3. Interpretation

In these regulations –

Act means the *Corrections Act 1997*.

PART 2 – MANAGEMENT OF PRISONS

4. Interpretation

In this Part –

classification committee means the classification committee established under regulation 5.

5. Establishment of classification committee

- (1) The Director is to establish a committee for the purpose of classifying prisoners and detainees on their admission to prison.
- (2) The Director may appoint any person as a member of the classification committee on any terms and conditions that the Director determines.

6. Classification of prisoners and detainees

- (1) The classification committee is to classify prisoners and detainees having regard to –
 - (a) age and character; and
 - (b) length of sentence; and
 - (c) nature of offence; and
 - (d) behaviour during current, and any previous, period of imprisonment; and

-
- (e) escape history; and
 - (f) any other relevant factor.
- (2) A prisoner or detainee may be classified into any one of the following security categories:
- (a) maximum;
 - (b) medium;
 - (c) minimum.
- (3) A prisoner or detainee may be reclassified at any time if, in the opinion of the classification committee, it is necessary or desirable to do so.

7. Separate cells

- (1) Each prisoner or detainee is to be accommodated –
- (a) if practicable, in a separate cell; or
 - (b) if it is not practicable to do so, in a cell with no more than 2 other prisoners or detainees.
- (2) Each prisoner or detainee is to be provided with a separate bed.

8. Separate treatment

- (1) The Director may order that, in accordance with any standing orders, a prisoner or detainee be subject to –

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- (a) separate confinement; or
 - (b) the use of mechanical or chemical restraints.
- (2) A person authorised to carry out an order under subregulation (1) may use reasonable force in carrying out the order if the person considers it necessary to do so.

9. Inspection of prison by medical officer

- (1) The Director is to ensure that a medical officer makes an inspection of a prison at least once every 3 months.
- (2) Following an inspection, the medical officer is to report to the Director on any matter that, in his or her opinion, constitutes a risk to the health of staff, prisoners or detainees.

10. Failure to eat food

- (1) If a medical officer certifies in writing that the failure of a prisoner or detainee to eat food provided in accordance with section 29(1)(b) of the Act is endangering the life or health of the prisoner or detainee, the Director may cause food to be fed to the prisoner or detainee.
- (2) The feeding of a prisoner or detainee under subregulation (1) is to be carried out under direct medical supervision.

11. Cleanliness

A prisoner or detainee is responsible for –

- (a) his or her personal cleanliness and hygiene; and
- (b) the cleanliness of any clothing in his or her possession; and
- (c) the cleanliness of his or her cell.

12. Work

- (1) If a prisoner is set to work under section 33 of the Act, he or she is to be attentive and diligent in the performance of that work.
- (2) The Director is to take into account the work performance of a prisoner when determining the amount of remission of sentence to be granted to the prisoner.

13. Orders to be obeyed

- (1) A prisoner or detainee is to promptly obey any order given by a correctional officer.
- (2) If a prisoner or detainee is aggrieved by an order given by a correctional officer, he or she –
 - (a) is to obey that order; and
 - (b) may lodge a complaint in relation to that order.
- (3) A complaint is to be –

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- (a) in writing; and
- (b) lodged with the Director.

**PART 3 – PROPERTY OF PRISONERS AND
DETAINEES**

14. Interpretation

In this Part –

property, in relation to a prisoner or detainee, includes any clothing, money and other personal items belonging to the prisoner or detainee.

15. Property held in custody

- (1) A person authorised by the Director is to hold in custody property of a prisoner or detainee until the prisoner or detainee is released or transferred to another prison.
- (2) If any property of a prisoner or detainee held in custody is lost or damaged, the Director is to order the replacement of the lost or damaged property –
 - (a) with a new or second-hand item of equivalent value; or
 - (b) with payment of an amount equivalent to the value of that property.
- (3) If a prisoner or detainee is transferred to another prison –
 - (a) the person authorised by the Director under subregulation (1) is to transfer the

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property of that prisoner or detainee to the other prison; and

- (b) the property is to be held in custody by the person in the other prison who is authorised by the Director to hold property in custody.
- (4) The Director is to ensure that appropriate receipts are given, in accordance with any standing orders, for property received into custody or transferred to another prison.

16. Access to property

- (1) A prisoner or detainee may apply to the Director to access his or her property held under regulation 15.
- (2) If the Director approves an application, he or she is to provide the prisoner or detainee with access to the property within one week of the approval.
- (3) If a prisoner or detainee lodges an application within 14 days before the day fixed for his or her release from prison, the Director is to approve the application and provide the prisoner or detainee with access to the property before the prisoner or detainee is released.

17. Complaints in respect of property

- (1) After accessing his or her property, a prisoner or detainee may lodge a complaint if he or she considers there is a discrepancy in, or damage to, the property.

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- (2) A complaint is to be –
 - (a) in writing; and
 - (b) lodged with the Director.

18. Return of property on release

- (1) When a prisoner or detainee is released from prison, his or her property is to be returned to him or her unless it has been destroyed in accordance with regulation 20.
- (2) If it has been necessary to destroy a prisoner's or detainee's clothing in accordance with regulation 20, he or she is to be provided, on release, with clothing that the Director considers sufficient to replace the destroyed clothing.

19. Return of property after release

- (1) This regulation applies if any property of a prisoner or detainee (in this regulation referred to as *the released person*) is not, for any reason, taken by or returned to him or her on release.
- (2) As soon as practicable after becoming aware that the property has not been taken or returned, the Director is to send the released person a notice advising –
 - (a) that the property is still being held; and
 - (b) the nature of the property; and

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- (c) that the released person, within a period of not less than 30 days specified in the notice, may arrange with the Director to –
 - (i) collect the property in person; or
 - (ii) have someone collect the property on the released person's behalf; or
 - (iii) have the property sent to the released person, or to an address nominated by the released person, at the released person's expense; and
 - (d) that, in the absence of such an arrangement, the property will be disposed of; and
 - (e) where, for the purposes of collection, the property is held; and
 - (f) such other matters as the Director thinks fit in the circumstances.
- (3) The notice is to be sent to the address of the released person last known to the Director.
 - (4) The released person may arrange for the property to be collected or sent in accordance with the terms of the notice.
 - (5) The Director may dispose of the property in such manner as the Director thinks fit if –

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- (a) the released person fails to make an arrangement under subregulation (4); or
 - (b) the Director is unable to send the notice because he or she does not have an address for the released person and is unable, after making reasonable enquiries, to discover such an address.
- (6) Any money received from the disposal of property under this regulation is to be paid into the Consolidated Fund.

20. Seized property

- (1) The Director may order that any item which is seized in a search carried out or conducted under section 20 or 22 of the Act and is of a perishable, unhygienic, dangerous or undesirable nature is to be –
 - (a) destroyed; or
 - (b) sent to an address nominated by the prisoner or detainee from whom the item was seized; or
 - (c) held in custody with the property of the prisoner or detainee; or
 - (d) disposed of in accordance with any standing orders.
- (2) The Director may require the prisoner or detainee to pay the cost of sending property under subregulation (1).

21. Dealing with excess property

- (1) The Director may order a prisoner or detainee to deal with, in accordance with this regulation, any personal property, other than money or legal documents, that the Director considers to be excessive.
- (2) The Director may order a prisoner or detainee to do one of the following:
 - (a) give the property to another person, who is not a prisoner or a detainee, for safe-keeping;
 - (b) donate the property to a registered charity;
 - (c) put the property in private storage;
 - (d) authorise the disposal of the property.
- (3) If a prisoner or detainee fails or refuses to deal with the property in accordance with subregulation (2) within 60 days of being so ordered, the Director may deal with the property in any manner the Director thinks fit.
- (4) The Director may require the prisoner or detainee to pay the cost of dealing with any property under subregulation (3).
- (5) Subject to subregulation (4), any money received from the disposal of property under this regulation is to be held by the Director, or a person authorised by the Director, on the prisoner's or detainee's behalf until the prisoner

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or detainee is released or transferred to another prison.

22. Use of prisoner's or detainee's money

The Director, at the request of a prisoner or detainee, may authorise on behalf of the prisoner or detainee expenditure of money, held by the Director on the prisoner's or detainee's behalf, in the manner specified in the authorisation.

PART 4 – RELEASE AND REMISSIONS

23. Release of prisoners

- (1) In this regulation –

public holiday includes any day or part of a day that is a statutory holiday, as defined in section 3 of the *Statutory Holidays Act 2000*, in that part of the State where the prisoner is detained.

- (2) The following provisions apply to the release of a prisoner:

- (a) on the day of release, the prisoner is to be released at the discretion of the Director between 6 a.m. and 5 p.m.;
- (b) in the case of a sentence of more than 14 days, if the day of release falls on a Saturday, Sunday or public holiday, the prisoner is to be released on a preceding weekday that is not a public holiday;
- (c) in the case of a sentence of 14 days or less, the prisoner is to be released on the last day of the sentence even if that day is a Saturday, Sunday or public holiday.

24. Release of detainees

A detainee is to be released immediately after the order for his or her detention expires.

25. Remission

- (1) For the purpose of section 86 of the Act, a remission of the whole or any part of a prisoner's sentence is not to –
 - (a) exceed 3 months if the period of imprisonment to which the remission relates is imposed after 1 January 1994; and
 - (b) exceed one-third of the total period of imprisonment to which a prisoner is sentenced; and
 - (c) operate so as to reduce the total period of imprisonment served by a prisoner to less than 3 months.
- (2) Remission of sentence is not to be granted to a prisoner who is –
 - (a) convicted of escape or attempted escape in respect of that part of the prisoner's sentence served up to and including the day on which the escape or attempted escape was made; or
 - (b) sentenced to a total period of imprisonment of 3 months or less.
- (3) The Director is not to grant a remission of sentence to a prisoner if that remission would operate to reduce the total period of imprisonment served by the prisoner in respect of that sentence to a period that is shorter than any non-parole period specified in an order made

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in respect of that prisoner under section 17(2)(b) of the *Sentencing Act 1997*.

- (4) Remission of sentence is not to be granted to a sex offender prisoner in respect of a sentence for a sexual offence if –
 - (a) the sex offender prisoner has been given a reasonable opportunity to participate in appropriate treatment pursuant to section 31 of the Act; and
 - (b) the sex offender prisoner –
 - (i) has chosen not to participate in the appropriate treatment; or
 - (ii) has chosen to participate in the appropriate treatment but the participation has been unsatisfactory participation within the meaning of section 31 of the Act.

26. Special remissions

- (1) A special remission granted under section 87(1)(a) of the Act is not to exceed 2 days for each day or part of a day during which the prison was affected by a dispute or emergency.
- (2) A special remission granted under section 87(1)(b) of the Act is not to exceed 14 days.

PART 5 – RECORDS

27. Interpretation

In this Part –

biometric data means any data relating to a physical trait.

28. Period of sentence

- (1) If a prisoner was sentenced at the one time to 2 or more periods of imprisonment, a reference in this Part to the period for which the prisoner was sentenced is a reference to the total period for which he or she could lawfully have been imprisoned by virtue of that sentence, whether or not he or she has been released before the expiration of that total period.
- (2) If a prisoner was sentenced at different times to 2 or more periods of imprisonment, a reference in this Part to the period for which the prisoner was sentenced is a reference to the latest of those periods, whether or not he or she has been released before the expiration of that latest period.

29. Taking of records

On admission to a prison and at any other time that the Director considers necessary, the Director may require a prisoner or detainee to –

- (a) state his or her name and age; and

- (b) have biometric data collected and recorded; and
- (c) be photographed or have images electronically recorded.

30. Destruction of records on acquittal

Any biometric data collected, photographs or images taken and electronic or other records made under regulation 29 are to be destroyed as soon as practicable after the release or acquittal of the prisoner or detainee if –

- (a) the detainee is released without conviction by a court; or
- (b) the prisoner is acquitted of the charge or offence in respect of which he or she was imprisoned; or
- (c) in the case of a migration detainee, he or she is released under the *Migration Act 1958* of the Commonwealth.

31. Application for destruction of records

- (1) A prisoner or detainee may apply to the Director for the destruction of any biometric data collected, photographs or images taken and electronic or other records made under regulation 29 relating to the prisoner or detainee.
- (2) An application under subregulation (1) is to be in writing and made no earlier than one year after –

- (a) the end of the period for which the prisoner was sentenced and the completion of any parole period; or
 - (b) the release of the detainee.
- (3) On receipt of an application under subregulation (1), the Director may order the destruction of any biometric data collected, photographs or images taken and electronic or other records made, having regard to –
 - (a) the nature of the offence for which –
 - (i) the sentence of imprisonment was imposed on the applicant; or
 - (ii) the applicant was committed to prison; and
 - (b) the circumstances of that offence; and
 - (c) the whole of the applicant’s criminal record; and
 - (d) if the applicant was released from prison before the expiration of his or her sentence, his or her conduct since he or she was so released.

32. Destruction of records 7 years after sentence expires

Subject to regulations 30 and 31, the Director is to destroy any biometric data collected, photographs or images taken and electronic or

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other records made under regulation 29 relating to a prisoner or detainee 7 years after –

- (a) the end of the period for which the prisoner was sentenced and the completion of any parole period; or
- (b) the release of the detainee.

33. Restrictions on use of records

A copy of any biometric data collected, photograph or image taken and electronic or other record made under regulation 29 of a prisoner or detainee is not, without the consent of the prisoner or detainee, to be given to any person other than a law enforcement body or other person who has a duty to receive or use it for identification purposes.

PART 6 – MISCELLANEOUS

34. Procedures on death of prisoner or detainee

(1) In this regulation –

senior next of kin means senior next of kin as defined in section 3 of the *Coroners Act 1995*.

(2) Immediately after the death of any prisoner or detainee, the Director is to ensure that notice of the death is given to –

(a) a coroner; and

(b) if practicable, the senior next of kin of the prisoner or detainee.

35. Legislation rescinded

The legislation specified in Schedule 1 is rescinded.

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SCHEDULE 1 – LEGISLATION RESCINDED

Regulation 35

Corrections Regulations 2008 (No. 82 of 2008)

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 25 July 2018.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations –

- (a) provide for a range of matters relating to the management of prisons and the discipline, welfare and release of prisoners and detainees; and
- (b) rescind the *Corrections Regulations 2008*.