

Young Offenders Amendment Regulations 2015

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Young Offenders 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 16 comes into operation.

3. Regulations amended

These regulations amend the *Young Offenders Regulations 1995*.

4. Part 8 heading replaced

Delete the heading to Part 8 and insert:

Part 8 — Employees

5. Regulation 48A inserted

At the beginning of Part 8 Division 2 insert:

48A. Term used: remove

In this Division —

remove, in relation to a person appointed under section 11(1a) of the Act, means terminate the employment of the person.

6. Regulation 48 amended

In regulation 48(2) delete “Division 3.” and insert:

Divisions 3 and 4A.

7. Regulation 51 amended

- (1) In regulation 51(3) delete “terminate the employment of” and insert:

remove

- (2) Delete regulation 51(4) to (6).

Note: The heading to amended regulation 51 is to read:

**Circumstances of removal for physical or mental health reasons
(section 11(1a))**

8. Regulation 52A inserted

After regulation 51 insert:

**52A. Circumstances of removal for other reasons
(section 11(1a))**

- (1) A juvenile custodial officer or miscellaneous employee who provides false, incomplete or misleading information in or with respect to an application for engagement as a juvenile custodial officer or miscellaneous employee may be removed by the chief executive officer.
- (2) Where the chief executive officer is of the opinion during, or at the end of, the period of probation of a juvenile custodial officer or miscellaneous employee that the juvenile custodial officer or miscellaneous employee is unsatisfactory in the performance of his or her duties, or unsuitable to be a juvenile custodial officer or miscellaneous employee, the chief executive officer may remove that juvenile custodial officer or miscellaneous employee.
- (3) The chief executive officer may extend the period of probation for a juvenile custodial officer or miscellaneous employee.

9. Regulation 52 amended

- (1) In regulation 52(1) delete “whose employment is terminated” and insert:

who is removed

- (2) In regulation 52(4) delete “has his or her employment terminated for reasons other than regulation 51(4) or disciplinary reasons under Division 3,” and insert:

is removed, other than under regulation 52A(1) or section 11CC of the Act,

Note: The heading to amended regulation 52 is to read:

Notice prior to removal (section 11(1a))

10. Part 8 Division 3 replaced

Delete Part 8 Division 3 and insert:

Division 3 — Discipline of custodial officers

**53. Application of *Public Sector Management Act 1994*
Part 5**

For the purposes of section 11(1C) of the Act custodial officers are prescribed for the purposes of the *Public Sector Management Act 1994* section 76(1)(b).

Division 4A — Removal of custodial officer due to loss of confidence

54. Terms used

In this Division, 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 57;

notice means a notice given under section 11CD(1) 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 custodial officer referred to in regulation 56(1);

removal action, in relation to a custodial officer, means the removal of the custodial officer under section 11CC of the Act;

review officer means a person appointed under regulation 56;

submission period has the meaning given in section 11CD(2) of the Act;

suitability to continue as a custodial officer has the meaning given in section 11CA 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 57.

55. Application of this Division

This Division applies if, under Part 3 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.

56. Appointment of review officer

- (1) If the chief executive officer is contemplating taking removal action in relation to a custodial officer, the chief executive officer may appoint a review officer in relation to that custodial officer.
 - (2) A person must not be appointed as a review officer in relation to a custodial 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 custodial officer's suitability to continue as a custodial officer; or
 - (b) a previous investigation of a suspected breach of discipline by that custodial 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 custodial officer under regulation 55 or 56 as those provisions were in force immediately before the

commencement of the *Young Offenders Amendment Regulations 2015* regulation 10; or

- (d) any decision-making relating to an investigation referred to in paragraph (a), (b) or (c).

57. Role of review officer

- (1) The review officer must conduct an investigation into the custodial officer referred to in regulation 56(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.

58. 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 57 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.

59. Notice of loss of confidence

- (1) In addition to the grounds to be set out under section 11CD(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 custodial officer that during the submission period the custodial 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 custodial officer's suitability to continue as a custodial officer.
- (2) When the chief executive officer gives the notice to a custodial officer, the chief executive officer must also provide to the custodial 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 custodial officer, the chief executive officer must make available to the custodial 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 custodial officer with a copy of a document or make available to the custodial officer for inspection any other material because it is privileged, the chief executive officer must advise the custodial officer of each ground on which the document or material is privileged.

60. Access to material

- (1) During the submission period the chief executive officer must permit a custodial officer who has been given a notice or the custodial 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 custodial 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 custodial officer under these regulations, that —

- (a) the custodial officer has seen or created in the course of his or her duties as a custodial officer; and
 - (b) is relevant to any issue concerning the custodial 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 custodial officer was given the notice.
 - (4) During the submission period the chief executive officer must as far as practicable permit the custodial officer or the custodial officer's legal representative to inspect the material the subject of a request under subregulation (2).

61. Chief executive officer's assessment of custodial officer's submissions

- (1) If the chief executive officer receives submissions from a custodial officer under section 11CD(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 custodial 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 custodial 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 custodial 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 11CD(3)(a) of the Act not to take removal action, the chief executive officer may decide that the custodial officer's performance or

conduct warrants other action being taken in relation to the custodial officer under the Act or these regulations.

62. Further ground for removal

- (1) If the chief executive officer concludes that he or she has lost confidence in the custodial officer's suitability to continue as a custodial officer on a ground other than a ground set out in the notice the chief executive officer must —
 - (a) give the custodial officer notice in writing of the further ground; and
 - (b) provide to the custodial 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 Division with the exception of —
 - (i) a copy of a document already given to the custodial officer or any material already made available for inspection by the custodial officer under this Division; and
 - (ii) a privileged document or material;and
 - (c) allow the custodial 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 custodial officer is given the notice of the further ground;
 - (ii) the day on which the custodial 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 custodial 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 custodial officer; or
 - (ii) the initiative of the chief executive officer.

- (3) If the chief executive officer does not provide the custodial 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 Division because it is privileged, the chief executive officer must advise the custodial 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 custodial officer under this Division of each ground on which the document or material is privileged.

63. 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 11CD(3)(b) of the Act must be given to the custodial 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 11CD(6) of the Act to the extent that —
 - (a) the chief executive officer has already provided the custodial officer with a copy of the document or made available to the custodial officer for inspection any other material under this Division; or
 - (b) the document or material is privileged.
- (3) If the chief executive officer does not comply with section 11CD(6) of the Act because the document or material is privileged the chief executive officer must advise the custodial 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 custodial officer under this Division of each ground on which the document or material is privileged.

64. Service of notices or documents

- (1) If a notice or document is required to be given to a custodial officer under Part 3 Division 3 of the Act or this Division, service may be effected on the custodial officer —
 - (a) by delivering it to the custodial 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 custodial

- officer or address for service given by the custodial officer in writing to the chief executive officer; or
- (c) by leaving it for the custodial officer at the custodial officer's usual or last known residential address; or
 - (d) by leaving it for the custodial officer at an address for service given by the custodial 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 custodial 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.

65. Application

Regulations 55 to 63 do not apply where a custodial officer is removed under regulation 51 or 52A.

66. Restriction on suspending custodial officer's pay

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

11. Regulation 70 amended

Delete regulation 70(2).

12. Regulation 89 amended

Delete regulation 89(3).

13. **Part 12 inserted**

After regulation 104 insert:

Part 12 — Savings and transitional provisions

105. Discipline before commencement day

(1) In this regulation —

commencement day means the day on which the *Young Offenders Amendment Regulations 2015* regulation 10 comes into operation;

former disciplinary provisions means Part 8 Division 3 as in force immediately before the commencement day;

misconduct, by a custodial officer, means conduct by the custodial officer that is or is reasonably suspected to be —

- (a) substandard performance or a breach of discipline, as those terms are defined in the *Public Sector Management Act 1994*; or
- (b) conduct that may result in the chief executive officer taking removal action, as defined in section 11CA of the Act, in relation to the custodial officer;

penalty includes any action against a custodial officer taken under the *Public Sector Management Act 1994* Part 5.

(2) Proceedings for a breach of discipline instituted under the former disciplinary provisions that are pending immediately before the commencement day are to be dealt with and determined under those provisions as if the *Young Offenders Amendment Regulations 2015* had not come into operation.

(3) Part 8 applies to misconduct committed, or suspected of having been committed, by a custodial officer before the commencement day but in relation to which proceedings for a breach of discipline have not been instituted under the former disciplinary provisions.

(4) However, if misconduct occurring before the commencement day would have constituted a breach of discipline under the former disciplinary provisions, a penalty cannot be imposed under Part 8 Division 3 in relation to the misconduct unless that penalty would also have been able to be imposed for the breach of discipline under the former disciplinary provisions.

Note: The heading to regulation 47 is to read:

Term used: miscellaneous employee