

1990 - No. 703

PRISONS ACT 1952 - REGULATION
(Relating to the disclosure of HIV test results and to penalties)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Prisons Act 1952, has been pleased to make the Regulation set forth hereunder.

MICHAEL YABSLEY
Minister for Corrective Services.

Commencement

1. This Regulation commences on 5 November 1990.

Amendments

2. The Prisons (Administration) Regulation 1989 is amended:
 - (a) by inserting in clause 11 (3) after the words "the prisoner" the words "(otherwise than for the purpose of an examination or test carried out under clause 34A of the Prisons (General) Regulation 1989";
 - (b) by inserting after clause 14 the following clause:

Disclosure of HIV test results

14A. (1) A person who, in the course of the administration of the Act or the Sentencing Act 1989 or any regulations under those Acts (including this clause), learns of the results of an examination or test under clause 34A of the Prisons (General)

Regulation 1989 must not disclose the results to any person other than the following persons:

- (a) the Director-General;
- (b) the Deputy Director-General;
- (c) the Executive Director, Prison Operations;
- (d) the Director of the Prison Medical Service;
- (e) the governor of the prison in which the prisoner is being held from time to time;
- (f) the medical officer of that prison;
- (g) the Manager of Prisoner Classification;
- (h) if the Serious Offenders Review Board exercises functions in relation to the prisoner, the Chairperson of the Board;
- (i) the Chairperson of the Offenders Review Board.

(2) The holder of an office specified in subclause (1) to whom the results of such an examination or test are disclosed must not disclose them to any person except for the purpose of exercising the functions of that office.

(3) The Executive Director, Prison Operations, or the Director of the Prison Medical Service may disclose the results of such an examination or test to a person who the Executive Director or Director considers requires the information to provide for the welfare of the prisoner concerned or the good management of the prison in which the prisoner is being held.

(4) This clause does not prevent disclosure to or by, or with the written consent of, a prisoner of the results of an examination of or test carried out on the prisoner.

- (c) by omitting from clause 50 the words "Director of Custodial Services" and by inserting instead the words "Executive Director, Prison Operations";
- (d) by omitting clause 54 and by inserting instead the following clause:

Penalty

54. Any person who contravenes any provision of this Regulation is guilty of an offence.

Maximum penalty: 20 penalty units.

EXPLANATORY NOTE

The object of this Regulation is to amend the Prisons (Administration) Regulation 1989:

- (a) to make it an offence for a person who, in the course of the administration of the Prisons Act 1952 or the Sentencing Act 1989 or regulations made under those Acts, learns of the results of an examination or test for evidence of exposure to or infection by Human Immunodeficiency Virus to disclose the results to any person other than the holders of certain specified offices within prisons administration; and
 - (b) to make it an offence for the holder of such an office who receives information as to the results of those examinations or tests to disclose them otherwise than for the purpose of exercising the functions of that office; and
 - (c) to allow the Executive Director, Prison Operations, or the Director of the Prison Medical Service to give such information to a person who requires it to provide for the welfare of the prisoner or the good management of the prison; and
 - (d) to change an out-of-date reference to a position in prisons administration; and
 - (e) to increase the maximum penalty for an offence against the Regulation to 20 penalty units (\$2,000).
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