

1993—No. 490

PRISONS ACT 1952—REGULATION

(Relating to the reporting of misconduct by prison officers)

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.

JOHN HANNAFORD, MLC
Attorney General and Minister for Justice.

The Prisons (Administration) Regulation 1989 is amended:

- (a) by omitting from the whole Regulation the word “Director-General” wherever occurring and by inserting instead the word “Commissioner”;
- (b) by inserting in the heading to Part 4 after the word “PRISON” the words “AND OTHER”;
- (c) by inserting after clause 34 the following clause:

Reporting of misconduct etc by prison officers

34A. (1) If:

- (a) an allegation is made to a prison officer that another prison officer has, while carrying out his or her duties as a prison officer, engaged in conduct which, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct; or
- (b) a prison officer sincerely believes that another prison officer has engaged in conduct of that land,

the prison officer is required to report the conduct (or alleged conduct) by the other prison officer to prison officer who is more senior in rank than the officer making the report.

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(2) The senior prison officer is required to report the conduct (or alleged conduct) by the prison officer promptly to the Commissioner if the senior prison officer believes that the conduct (or alleged conduct):

- (a) constitutes (or would constitute) a criminal offence by the prison officer; or
- (b) would provide sufficient grounds for preferring a departmental charge against the prison officer.

(3) Subclause (1) does not apply to conduct or alleged conduct:

- (a) that has been made the subject of a departmental charge; or
- (b) that has been the subject of evidence or other material given, or submissions made, in the course of criminal proceedings; or
- (c) that has already been reported under this clause to a more senior prison officer.

(4) A prison officer must not, in relation to any other prison officer:

- (a) fail to approve or recommend the promotion of the other prison officer; or
- (b) take, approve or recommend disciplinary action against the other prison officer; or
- (c) direct, approve or recommend the transfer of the other prison officer to another position in the Department; or
- (d) make, approve or recommend a decision which detrimentally affects the benefits or awards of the other prison officer; or
- (e) fail to approve or recommend that the other prison officer receive education or training which could reasonably be expected to improve the officer's opportunities for promotion or to confer some other advantage on the officer; or
- (f) change the duties of the other prison officer so that they are not appropriate to the officer's salary or position or approve or recommend such a change; or
- (g) otherwise act to the detriment of the other prison officer, in retaliation against the other prison officer because he or she has acted in accordance with this clause or has disclosed information relating to conduct contrary to law to my other prison officer.

(5) Despite clause 54, a prison officer who contravenes a provision of this clause (including failing to report misconduct that has been reported to the officer) is not guilty of an offence. However, the prison officer may be dealt with for a breach of discipline under Part 5 of the Public Sector Management Act 1988.

(6) In this clause, “**departmental charge**” means a charge relating to a breach of discipline under Part 5 of the Public Sector Management Act 1988 committed or alleged to have been committed by the prison officer to whom the charge relates.

EXPLANATORY NOTE

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

- to require prison officers to report suspected misconduct by other prison officers while carrying out their duties as prison officers
- to require senior prison officers to whom a report of misconduct is made to report the misconduct to the Commissioner of Corrective Services
- to protect prison officers from victimisation if they have reported misconduct by other prison officers
- to change references to the Director-General of Corrective Services to the Commissioner of Corrective Services.

The provisions of this Regulation relating to the reporting of misconduct by prison officers are similar to those provisions relating to the reporting of misconduct by police officers under the Police Service Regulation 1990.

This Regulation is made under the Prisons Act 1952, including section 50 (1) (o) in particular.
