

Corrections Management (Detainee Discipline – Hearings) Operating Procedure 2023

Notifiable instrument NI2023–421

made under the

Corrections Management Act 2007, s14 (Corrections policies and operating procedures)

1 Name of instrument

This instrument is the *Corrections Management (Detainee Discipline – Hearings) Operating Procedure 2023*.

2 Commencement

This instrument commences on the day after its notification day.

3 Operating Procedure

I make this operating procedure to facilitate the effective and efficient management of corrections services.

4 Revocation

This instrument revokes *Corrections Management (Detainee Discipline – Hearings) Operating Procedure 2022* [NI2022-37].

Bruno Aloisi
A/g Commissioner
ACT Corrective Services
14 July 2023



OPERATING PROCEDURE	Detainee Discipline – Hearings
OPERATING PROCEDURE NO.	D11.2
SCOPE	Alexander Maconochie Centre

PURPOSE

To provide instructions to staff on formally hearing a detainee's disciplinary charge/s, and the process by which a detainee may appeal the outcome of a hearing.

DEFINITIONS

Investigating Officer

The ACTCS staff member responsible for investigating alleged breaches of discipline.

Presiding Officer

The officer responsible for reviewing *Disciplinary Offence* reports and the Investigating Officer's Report and determining whether to lay a charge for the alleged disciplinary breach or take other action.

The officer responsible for presiding and determining outcomes at a disciplinary hearing.

The Presiding Officer for the hearing must not be the same officer as the Presiding Officer who laid the charge.

PROCEDURES

1. Allocation of hearing to Presiding Officer

- 1.1. The Investigating Officer liaises with the Operations Manager (CO4) to allocate upcoming hearings to Presiding Officers.

2. Hearing

- 2.1. A disciplinary hearing must be commenced within five (5) business days from the issuing of a D11.F2: Charge Notice. The date of the hearing must be included in the D11.F2: Charge Notice.
- 2.2. The second Presiding Officer must review the Disciplinary Offence Report and any other relevant material prior to the hearing. The second Presiding Officer may direct the Investigating Officer to make additional investigations as required.
- 2.3. The second Presiding Officer must determine whether any witnesses or reports are required prior to the hearing and direct the Investigating Officer to give written notice to request a person to attend as a witness or provide relevant information.
- 2.4. The second Presiding Officer must determine whether the detainee may need supports or advice during the hearing, including:
 - a. where a detainee has disability, language or comprehension difficulties

- b. ensuring the Investigating Officer notifies the Aboriginal and Torres Strait Islander Unit that an Aboriginal and Torres Strait Islander detainee may require support
 - c. where the second Presiding Officer has concerns about a detainee's physical or mental health.
- 2.5. On the morning of the hearing the Investigating Officer must provide the relevant Unit Officer with the approximate time a hearing is scheduled, and a list of all detainees and support persons required to attend.
- 2.6. The Investigating Officer must identify a suitable location approved for holding the disciplinary hearing.

Detainee attendance at hearing

- 2.7. Once the hearing room has been prepared and the second Presiding Officer and other stakeholders are present, the identified supporting correctional officer must arrange for the detainee to attend.
- 2.8. If the detainee refuses to attend the hearing, the second Presiding Officer may by their discretion proceed with the hearing in the detainee's absence.
- 2.9. The Unit Officer must case note that the detainee has refused to attend the hearing.
- 2.10. The second Presiding Officer must record the outcome on the D11.F5: Hearing Result and provide a signed copy to the detainee within 24 hours of the hearing. The second Presiding Officer should, where practicable, provide the D11.F5: Hearing Result to the detainee by email as well as in hard copy.
- 2.11. When the detainee is present for the hearing, the detainee must be asked to sit opposite the second Presiding Officer. If any additional correctional officers are required to be present for safety and security reasons, they must not have been involved in the incident.

Commencing the hearing

- 2.12. Once the hearing commences the second Presiding Officer must:
 - a. confirm the identity of the detainee
 - b. read the charge/s to the detainee and ensure the detainee understands the charge/s
 - c. confirm the detainee understands the disciplinary process and, if not, explain it
 - d. confirm the detainee received the D11.F2: Charge Notice within the appropriate timeframe
 - e. ask the detainee whether they admit to the charge/s
 - f. ask the detainee whether they have prepared a written statement on the D11.F7: Detainee Statement
 - g. ask the detainee if they would like to call any witnesses, and how the information the witness will provide relates to the charge/s.
- 2.13. The detainee retains the privilege against self-incrimination and the right to remain silent and the second Presiding Officer must not force a detainee to answer questions which may incriminate them.

- 2.14. Where a detainee remains silent or does not provide an adequate response to the question in section 1.9 (e) the second Presiding Officer must record that the detainee contests the charge/s.

Detainee admits to the charge

- 2.15. If the detainee admits to the charge/s the second Presiding Officer must:
- a. either:
 - i. reprimand or warn the detainee OR
 - ii. issue the detainee with an appropriate and proportionate administrative penalty or a combination of penalties
 - b. record the outcome on the D11.F5: Hearing Result
 - c. close the formal hearing.
- 2.16. The second Presiding Officer must provide a signed copy, and where practicable email a copy, of the D11.F5: Hearing Result to the detainee within 24 hours of the hearing.

Detainee contests the charge – conducting the hearing

- 2.17. If the detainee does not admit to the charge/s the second Presiding Officer must consider all information relevant to the charge/s, including the D11.F7: Detainee Statement, if the detainee has submitted one. Where a D11.F7: Detainee Statement, has not been provided, the second Presiding Officer should offer for the detainee to make a brief verbal statement instead. The second Presiding Officer may call the reporting officer and any other relevant person to answer questions related to the charge/s.
- 2.18. The second Presiding Officer may direct that the detainee be removed from the hearing if the detainee:
- a. unreasonably interrupts, interferes, or obstructs the hearing or
 - b. contravenes a reasonable direction of the second Presiding Officer about their conduct in the hearing.
- 2.19. If the second Presiding Officer directs the detainee to be removed from the hearing, the second Presiding Officer must provide the detainee with a D11.F9: Hearing Exclusion form, excluding them for the remainder of the hearing.
- 2.20. Based on the evidence presented, the second Presiding Officer must decide whether the charge/s is proven on the balance of probabilities or not, and:
- a. either
 - i. dismiss the charge/s
 - ii. issue the detainee with an appropriate and proportionate administrative penalty or a combination of penalties OR
 - iii. refer the breach of discipline to police in accordance with the process set out in the Detainee Discipline – Laying a charge Operating Procedure
 - b. record the outcome on the D11.F5: Hearing Result
 - c. Close the formal hearing.

- 2.21. The second Presiding Officer must provide a signed copy, and where practicable email a copy, of the D11.F5: Hearing Result to the detainee within 24 hours of the hearing.
- 2.22. Where the charge/s is found to be proven, the detainee must also be provided with a D11.F6: Hearing Review form.

Documenting the hearing

- 2.23. The second Presiding Officer must:
 - a. make a comprehensive record of the details of the hearing in the Discipline module in CORIS
 - b. document clear reasons for their decision in the Decision tab
 - c. upload the D11.F5: Hearing Result and, where relevant, the D11.F7: Detainee Statement and D11.F9: Hearing Exclusion forms to 'external documents' within the Discipline module
 - d. update the status in the Discipline module.

3. Adjournment

- 3.1. The second Presiding Officer may adjourn the hearing for the following reasons:
 - a. the second Presiding Officer has concerns about the detainee's physical or mental health at the time of the hearing
 - b. it is not possible to complete the hearing for any reason (detainee is attending court, AMC's operational requirements, etc.)
 - c. a witness is not available to attend
 - d. the detainee's legal representation is not available to attend
 - e. an appropriate support person is not available for a detainee that has a disability, language or comprehension difficulties
 - f. an Aboriginal Liaison Officer is not available to support an Aboriginal and Torres Strait Islander detainee.
- 3.2. Where the second Presiding Officer has adjourned the hearing, the Investigating Officer must determine the next date for the hearing and provide the detainee with an updated D11.F2: Charge Notice.
- 3.3. The second Presiding Officer must record the adjournment in the Discipline module.
- 3.4. Where a charge has been open for six weeks from the initial hearing and the delay has not been the fault of the detainee, the Presiding Officer must consider whether natural justice and procedural fairness is being met, and
 - a. dismiss the charge or
 - b. continue the charge and record the reasons for the decision in the Discipline module.

4. Witnesses

- 4.1. The second Presiding Officer may call the reporting officer and any other relevant person to answer questions relating to the charge where it is being contested by the detainee.
Witnesses should not be present to hear evidence of other witnesses during the hearing.
- 4.2. The detainee may ask questions of witnesses.
- 4.3. The second Presiding Officer may dismiss any question or statement from the detainee if they believe it is:
 - a. unfair, unduly prejudicial or vexatious or
 - b. involves an abuse of the disciplinary process.

5. Legal representation

- 5.1. The second Presiding Officer may consent to a detainee having legal representation in accordance with the Corrections Management Act 2007 (ACT) and the considerations in section 8.26 of the Detainee Discipline Policy, in particular if:
 - a. the charge is particularly serious or complex
 - b. the detainee would not be able to understand or participate effectively in the hearing without legal representation.
- 5.2. Where a detainee has been permitted legal representation, access to information by the legal representative must be limited to the same as an unrepresented detainee.
- 5.3. Where the availability of a legal representative is causing significant delay, the second Presiding Officer may proceed with the hearing to ensure the disciplinary charge is resolved in a timely manner, if this is consistent with natural justice.

6. Review of Decision

Internal review

- 6.1. The Assistant Commissioner Custodial Operations may review the decision of the second Presiding Officer on their own initiative.
- 6.2. A detainee may request the Assistant Commissioner Custodial Operations to review the hearing outcome by completing a D11.F6: Hearing Review form and submitting it to a correctional officer within seven days of the detainee receiving the D11.F5: Hearing Result.
- 6.3. The correctional officer must provide the D11.F6: Hearing Review form to the Area Supervisor as soon as practicable.
- 6.4. The Area Supervisor must email the D11.F6: Hearing Review form to AMCdiscipline@act.gov.au by close of business on the same day the form was submitted.
- 6.5. The Investigating Officer must notify the Assistant Commissioner Custodial Operations within one business day. The Investigating Officer must record this action in the *Disciplines Log* and upload the D11.F6: Hearing Review form to 'external documents' within the Discipline module.
- 6.6. The Assistant Commissioner Custodial Operations must consider the relevant evidence and other documentation and review the second Presiding Officer's decision. The Assistant

Commissioner Custodial Operations must complete the review of the decision within 14 days of receiving the D11.F6: Hearing Review form.

- 6.7. The Assistant Commissioner Custodial Operations may:
 - a. confirm the decision
 - b. amend the decision
 - c. set aside the decision and make a different decision, exercising the function of a Presiding Officer
- 6.8. The Assistant Commissioner Custodial Operations must ensure the detainee is given written notice of the outcome of the review.
- 6.9. The Investigating Officer must record the outcome of the review in the *Disciplines Log* and upload the updated D11.F6: Hearing Review form to 'external documents' within the Discipline module.

External Review

- 6.10. Where the Assistant Commissioner Custodial Operations has reviewed the disciplinary decision and the detainee wishes to appeal the decision, they can do so by completing another D11.F6: Hearing Review form for review by an external adjudicator and submit it to a correctional officer within seven days of receiving notice of the outcome of the Assistant Commissioner Custodial Operations's review.
- 6.11. The correctional officer must provide the D11.F6: Hearing Review form to the Area Supervisor as soon as practicable.
- 6.12. The Area Supervisor must email the D11.F6: Hearing Review form to AMCdiscipline@act.gov.au by close of business on the same day the form was submitted.
- 6.13. The Investigating Officer must send the D11.F6: Hearing Review form to the Office of the Commissioner, record this action in the *Disciplines Log*, and upload the D11.F6: Hearing Review form to 'external documents' in the Discipline module.
- 6.14. The Office of the Commissioner, must ensure that all relevant material and records relating to the disciplinary decision are provided to the external adjudicator.
- 6.15. The external adjudicator may refuse to review the Assistant Commissioner Custodial Operations' decision. If so, the external adjudicator must provide written notice of the refusal, including reasons, and notice that the detainee may apply for a review of the decision under the [Administrative Decisions \(Judicial Review\) Act 1989](#).
- 6.16. The Office of the Commissioner must assist the external adjudicator to ensure the written notice is provided to the detainee as soon as reasonably practicable.
- 6.17. The Office of the Commissioner must also direct the Investigating Officer to record the outcome of the review in the *Disciplines Log* and upload the written notice to 'external documents' within the Discipline module.
- 6.18. After completing their review of the Assistant Commissioner Custodial Operations' decision, the external adjudicator may:
 - a. confirm the decision

- b. amend the decision
 - c. set aside the decision and make a different decision, exercising the function of a Presiding Officer
- 6.19. The Office of the Commissioner must assist the external adjudicator to ensure the detainee is given written notice of the outcome of the review as soon as reasonably practicable, including reasons, and notice that the detainee may apply for a review of the decision under the [Administrative Decisions \(Judicial Review\) Act 1989](#).
- 6.20. The Office of the Commissioner must also direct the Investigating Officer to record the outcome of the review in the *Disciplines Log* and upload the written notice to 'external documents' within the [Discipline module](#).

RELATED DOCUMENTS AND FORMS

- Detainee Discipline Policy
- Detainee Discipline – Laying a charge Operating Procedure
- Detainee Discipline – Penalties Operating Procedure
- Incident Report
- Disciplinary Offence report
- D11.F2: Charge Notice
- D11.F3: Investigating Officer's Report
- D11.F5: Hearing result
- D11.F6: Hearing Review
- D11.F7: Detainee Statement
- D11.F8: Notice of Incident Referral
- D11.F9: Hearing Exclusion
- Incident Report

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ACT Corrective Services
12 July 2023

Document details

Criteria	Details
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Date effective:	The day after the notification date
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Responsible Officer:	Senior Director Operations
Compliance:	This operating procedure reflects the requirements of the <i>Corrections Management (Policy Framework) Policy 2020</i>

Version Control			
Version no.	Date	Description	Author
V1	September 2021	First Issued	S Leedham
V2	June 2023	First revision	S Viereck