

**The Rights of Accused People in Detention to Segregation and Appropriate Treatment**

Human Rights Act 2004 (ACT) (“the Act”), sections 19(2) and 19(3):

An accused person must be segregated from convicted people, except in exceptional circumstances.

An accused person must be treated in a way that is appropriate for a person who has not been convicted.

International Covenant on Civil and Political Rights (“ICCPR”), article 10(2)(a):

Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

All ACT public authorities must act consistently with human rights. This is required by section 40B(1) of the Act. “Public authorities” include ACT Corrective Services and its employees at all levels.

This note provides guidance on the human rights of adult people in detention who are accused of committing crimes, but have not been convicted (“**accused people**”) to be segregated from convicted people and treated in a way appropriate for a person who has not been convicted. These rights are stated in sections 19(2) and 19(3) of the Act. Their primary source is article 10(2)(a) of the ICCPR, a human rights treaty. All three provisions are set out above.

This guidance is based on a wide range of sources. They include the texts of the Act and relevant treaties, and decisions of ACT courts, international courts and the UN Human Rights Committee.

The note is a simplified version of a paper on this topic that the ACT Human Rights Commission published in October 2024. For more information, including full legal citations, see that paper.

**Presumption of innocence of the accused and non-punitive, exceptional nature of their detention**

The rights of detained accused people to segregation and appropriate treatment reflect, and follow from, their right to be presumed innocent, stated in s 22(1) of the Act. Due to this right, an accused person cannot be detained to punish them for the crime they are accused of committing, but only for a non-punitive reason such as to prevent them from fleeing before trial. The Act, s 18(5), also requires the detention of accused people to be an exceptional, not a standard, measure. This reflects both accused people’s right to the presumption of innocence and their right to liberty.

**Right to segregation except in exceptional circumstances**

*The general rule: an accused person must be segregated from convicted people*

The term “segregate” in this context means to separate or to keep separate or apart. If accused and convicted people are detained at the same prison, the general rule is that they must be kept in separate quarters from one another. “Separate quarters” means not just separate cells, but also separate parts or sections of the prison from convicted detainees. If detainees sleep in separate rooms but share common indoor areas, or common outdoor areas such as yards, this would not constitute keeping them in separate quarters, in the Commission’s view.

ACT courts have found that accommodating an accused person and convicted people in the same “unit” or “housing” at the ACT’s prison, the Alexander Maconochie Centre (“**AMC**”), where there are no exceptional circumstances, breaches the human right to segregation of a detained accused person. The UN Human Rights Committee and Inter-American Court of Human Rights have found that right to have been violated both when accused and convicted people shared prison cells, even if only for a short time such as a few days, and when they shared cell blocks at the same prison.

*The exception to the general rule: “exceptional circumstances”*

Section 19(2) of the Act, and international human rights law, permit the mixing of detained accused people and detained convicted people in “exceptional circumstances”. This is a narrow exception. The ACT Supreme Court has emphasised that “exceptional circumstances” in this context means circumstances that are non-routine and depart from a generally operating rule; they cannot be part of the normal running of the relevant place of detention.

The Court found that housing an accused person with convicted detainees at the AMC for safety reasons, when there was no generally operating rule that those two categories of detainees were accommodated separately at the prison, breached the right to segregation under s 19(2) (in [DPP v Alexander \(a pseudonym\), May 2024](#)). The Court has since taken the same view in other cases.

An example of limited mixing which did not breach the right to segregation occurred in a case considered by the UN Human Rights Committee, [Pinkney v Canada \(October 1981, CCPR/C/14/D/27/1977\)](#). In that case, some convicted detainees in protective custody worked as food servers and cleaners in the remand (unconvicted) area of a Canadian prison. The Committee said that it would not regard these arrangements as incompatible with the right, as long as contact between the two groups was kept strictly to the minimum necessary to perform those tasks.

**Right to be treated in a way appropriate for a person who has not been convicted**

Since accused people must be presumed to be innocent until proven guilty, when they are detained it is never appropriate to treat them as though they are a criminal, or in detention as a punishment.

Segregation from convicted detainees is a form of treatment appropriate to the unconvicted status of accused people in detention. In other words, segregation is a concrete way of giving effect to their right to appropriate treatment under s 19(3) of the Act, as well as being a right in itself under s 19(2).

Other concrete actions that a detaining authority will need to take to comply with s 19(3) include actions to enable a detained accused person to exercise their human rights relating to due process and the fairness of a trial. The Act and international human rights law include a series of rights of this kind. Most notably, all accused people, including those in detention, have the right to adequate facilities to prepare their defence and to communicate with lawyers or advisors chosen by themselves: s 22(2)(b) of the Act, which is based primarily on article 14(3)(b) of the ICCPR.

This means, for example, that prisons must let accused people in their custody meet their lawyers and have access to resources and material that will enable them to prepare and review information regarding their case. This could include a computer and copies of evidence and court submissions.

The influential and widely accepted [Nelson Mandela Rules \(revised UN Standard Minimum Rules for the Treatment of Prisoners, A/RES/70/175\)](#) outline further forms of appropriate treatment of these detainees. For example, they cannot be required to work; they should be allowed to obtain food from the outside, at their own expense, and wear their own clothes if clean and suitable; and if given prison clothes, the clothes should be different to those of convicted detainees. Another widely accepted set of standards, the [Bangkok Rules \(UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, A/RES/65/229\)](#), states that women face a particular risk of abuse in pre-trial detention and authorities should adopt measures to guarantee their safety.

Finally, it should be noted that although treating detained accused people in a way that is “appropriate” for a person who is not convicted does require them to be treated *differently* to other detainees in some respects, it does not permit that they be treated *worse* than other detainees, nor deprived of their other human rights. These rights include the right of all detainees, under s 19(1) of the Act, to be treated with humanity and respect for their inherent dignity.