



Australian Capital Territory

Custodial Escorts Regulations 2002

Subordinate Law 2002 No 11

The Australian Capital Territory Executive makes the following regulations under the *Custodial Escorts Act 1998*.

Dated 3 June 2002.

TED QUINLAN
Minister

BILL WOOD
Minister



Australian Capital Territory

Custodial Escorts Regulations 2002

Subordinate Law 2002 No 11

made under the

Custodial Escorts Act 1998

Contents

	Page
1 Name of regulations	1
2 Commencement	1
3 Dictionary	1
4 Who may conduct searches	1
5 Power to conduct searches	1
6 Rules for conduct of searches	1
7 Safekeeping of things seized	4
8 Record	4
9 Approved forms	5
Dictionary	6

1 Name of regulations

These regulations are the *Custodial Escorts Regulations 2002*.

2 Commencement

These regulations commence on their notification day.

3 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary defines certain words and expressions and includes references (*signpost definitions*) to other words and expressions defined elsewhere in these regulations or in other legislation.

For example, the signpost definition in the dictionary '*custodial officer*—see the *Custodial Escorts Act 1998*, section 3' means that the expression *custodial officer* is defined in section 3 of that Act and the definition applies to these regulations.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulations unless the definition, or another provision of the regulations, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Who may conduct searches

A search may only be conducted by an escort who is a custodial officer.

5 Power to conduct searches

- (1) An escort must conduct a search of a person in the escort's custody.
- (2) If a seizable item is found in the search, the escort conducting the search must seize the item.

6 Rules for conduct of searches

- (1) A search—

- (a) must be conducted in a private area; and
 - (b) must be conducted in the presence of a necessary person; and
 - (c) must not be conducted in the presence or view of—
 - (i) a person of the opposite sex to the person being searched; and
 - (ii) a person other than the escort conducting the search and, if required, a necessary person; and
 - (d) must be conducted by an escort of the same sex as the person being searched; and
 - (e) must not involve the removal of more clothing than the escort carrying out the search believes on reasonable grounds to be necessary to find out if the person has a seizable item and to seize that item; and
 - (f) must not involve more visual inspection than the escort believes on reasonable grounds to be necessary to find out if the person has a seizable item.
- (2) However, if no escort or necessary person of the same sex as the person to be searched is available, within a reasonable time, for a search of the person, the search may be conducted—
- (a) by an escort, who is authorised by the designated escort, of the opposite sex to the person; or
 - (b) in the presence of a necessary person, who is authorised by the designated escort, of the opposite sex to the person.
- (3) The escort conducting a search involving the removal of clothing must, immediately after completing the search, return the clothing to the person.
- (4) Subregulation (2) does not apply in relation to a child or young person.
- (5) If a search is conducted by an escort of the opposite sex to the person being searched, the designated escort must make a record of

the search and the reason it was conducted by an escort of the opposite sex to the person being searched.

- (6) If a search is conducted by an escort of a child or young person who is 10 years old or older, the search must be conducted in the presence of—
- (a) someone with parental responsibility for the child or young person; or
 - (b) if that is not acceptable to the child or young person, someone else (other than the chief executive) who is capable of representing the interests of the child or young person and who, as far as practicable in the circumstances, is acceptable to the child or young person.
- (7) Despite subregulation (2), a search of a child or young person may be conducted in the presence of a doctor of the opposite sex to the child or young person searched, if a doctor of the same sex as the child or young person is not available in a reasonable time.
- (8) In this regulation:

child—see the *Children and Young People Act 1999*, section 7.

necessary person means—

- (a) if the physical or mental health of the person being searched makes it desirable—a doctor or nurse; and
- (b) if the search is conducted using force—the minimum number of other escorts necessary to enable the search to be conducted; and
- (c) if no person mentioned in paragraph (a) or (b) is present—a person approved in writing by the designated escort.

parental responsibility—see the *Children and Young People Act 1999*, section 17.

young person—see the *Children and Young People Act 1999*, section 8.

7 Safekeeping of things seized

- (1) If an escort seizes an item during a search, the escort must—
 - (a) if the escort considers the item to be a prohibited weapon or prohibited article or anything that may be required to be used as evidence in proceedings—as soon as possible give the weapon, article or thing to a police officer; or
 - (b) if the escort considers the item to be perishable or contaminated or if the escort reasonably believes the item would pose a risk to the health or safety of a person—as soon as possible, after obtaining the consent of the administrator, destroy the item or dispose of it; or
 - (c) when the person ceases to be in the custody of the escort—return the item to the person from whom it was seized, or a person nominated by that person.
- (2) The administrator may consent to the destruction or disposal of perishable items or items the administrator has reasonable grounds to believe would pose a risk to the health or safety of any person.
- (3) In this regulation:

prohibited article—see the *Prohibited Weapons Act 1996*, section 3 (1).

prohibited weapon—see the *Prohibited Weapons Act 1996*, section 3 (1)

8 Record

If an escort seizes an item in a search the escort must make a record—

- (a) of the date and time of the search and the place where the search was conducted; and
- (b) describing the item; and

- (c) if a seized item is destroyed—of the manner and date of destruction and the reasons for the destruction; and
- (d) if a seized item is given to a police officer—of the reasons for giving the item to the officer.

9 Approved forms

- (1) The administrator may approve forms for these regulations.
- (2) If the administrator approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

Dictionary

(see reg 3)

designated escort means the manager, court transport unit of ACT Corrective Services.

search means a search of a person or of articles in the possession of a person that may include—

- (a) requiring a person to take off all the person's clothing; and
- (b) an examination of a person's clothing; and
- (c) a visual examination of a person's body; and
- (d) a visual examination of a person's mouth cavity (but not an examination of the person's other body cavities).

seizable item means anything—

- (a) that would endanger a person; or
- (b) that can be used to assist a person to escape from custody; or
- (c) that can put at risk an escort's custody or control of a person; or
- (d) that can be used to threaten the security or good order of a police station, court, correctional facility or vehicle.

superintendent means the superintendent for a remand centre under the *Remand Centres Act 1976*.

Endnote

Notification

Notified under the *Legislation Act 2001* on 4 June 2002.

(see www.legislation.act.gov.au)

© Australian Capital Territory 2002