



Australian Capital Territory

# **Custodial Escorts Regulation 2002**

**SL2002-11**

made under the

**Custodial Escorts Act 1998**

**Republication No 3**

**Effective: 1 November 2004 – 1 June 2006**

Republication date: 1 November 2004

Last amendment made by A2003-14  
(republishing includes editorial amendments  
under Legislation Act)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Custodial Escorts Regulation 2002*, made under the *Custodial Escorts Act 1998* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 November 2004. It also includes any amendment, repeal or expiry affecting the republished law to 1 November 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Custodial Escorts Regulation 2002

made under the

**Custodial Escorts Act 1998**

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R3  
01/11/04

Custodial Escorts Regulation 2002  
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Australian Capital Territory

# **Custodial Escorts Regulation 2002**

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made under the

**Custodial Escorts Act 1998**

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**1 Name of regulation**

This regulation is the *Custodial Escorts Regulation 2002*.

**3 Dictionary**

The dictionary at the end of this regulation is part of this regulation.

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation.

*Note 2* A definition in the dictionary applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, 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 carrying out searches—general**

- (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) Subsection (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 subsection (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 section:

**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.



**6A Rules for carrying out searches—transgender and intersex people**

- (1) If a transgender or intersex person is searched under this regulation, the person may require that the search be conducted by either a male or a female.

*Note 1* For the meaning of *transgender person*, see the Legislation Act, s 169A.

*Note 2* For the meaning of *intersex person*, see the Legislation Act, s 169B.

- (2) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for section 6, to be male.
- (3) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for section 6, to be female.

**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 section:

***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 this regulation.
- (2) If the administrator approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- chief executive (see s 163)
- doctor
- nurse
- police officer.

*Note 3* Terms used in this regulation have the same meaning that they have in the *Custodial Escorts Act 1998* (see Legislation Act, s 148.) For example, the following terms are defined in the *Custodial Escorts Act 1998*, dict:

- administrator
- court
- custodial officer
- escort.

***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*.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This regulation was originally the *Custodial Escorts Regulations 2002*. It was renamed under the *Legislation Act 2001*.

#### **Custodial Escorts Regulation 2002 SL No 11**

notified LR 4 June 2002

commenced 4 June 2002 (s 2)

as amended by

#### **Legislation (Gay, Lesbian and Transgender) Amendment Act 2003**

##### **A2003-14 sch 1 pt 1.11**

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75)

sch 1 pt 1.11 commenced 28 March 2003 (s 2)

### 4 Amendment history

#### **Name of regulation**

s 1 am R3 LA

#### **Commencement**

s 2 om LA s 89 (4)

#### **Rules for carrying out searches—general**

s 6 hdg sub A2003-14 amdt 1.48

#### **Rules for carrying out searches—transgender and intersex people**

s 6A ins A2003-14 amdt 1.49

## 5 Earlier replications

Some earlier replications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised replications have also been published in printed format. These replications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Replication No	Amendments to	Replication date
1	not amended	4 June 2002
2	A2003-14	28 March 2003

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