



Australian Capital Territory

# **Periodic Detention Act 1995      No 3**

**Republication No 6**

**Effective: 28 March 2003**

Republication date: 28 March 2003

Last amendment made by A2003-14

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Periodic Detention Act 1995* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 28 March 2003. It also includes any amendment, repeal or expiry affecting the republished law to 28 March 2003.

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

### Kinds of republications

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- 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

# Periodic Detention Act 1995

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Australian Capital Territory

## Periodic Detention Act 1995

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An Act to provide for the periodic detention of certain offenders, and for related matters

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Periodic Detention Act 1995*.

### 3 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***court*** means the Supreme Court or the Magistrates Court.

***custodial officer*** means a custodial officer as provided for by section 37.

***dentist*** means a registered dentist within the meaning of the *Dentists Registration Act 1931*.

***detainee*** means an offender in respect of whom an order for periodic detention is in force.

***detention centre*** means a place declared to be a detention centre under section 42.

***detention period***, in relation to a detainee, means a period that, subject to any order of the director under section 16—

- (a) commences at 7 pm on the same day of the week as the date specified in the order of the court imposing the sentence as the day on which the sentence commences; and
- (b) ends at 4.30 pm on the second day after the day on which the period commences;

but does not include any such period which includes the whole or any part of Christmas Day, Good Friday or Easter Sunday.



**director** means the Director of Corrective Services provided for by section 36.

**manager** means a manager of a detention centre as provided for by section 37.

**medical practitioner** means a registered medical practitioner within the meaning of the *Medical Practitioners Act 1930*.

**nurse** means a registered nurse within the meaning of the *Nurses Act 1988*.

**officer** means a custodial officer or manager.

**official visitor** means a person appointed under the *Remand Centres Act 1976*, section 6A.

**periodic detention** means periodic detention the subject of an order under section 4.

**standing orders** means the orders and instructions in force under section 58 (Standing orders).

- (2) A reference in this Act to an order for periodic detention shall, if the order has been varied, be read as a reference to the order as varied.

## **Part 2                      Periodic detention**

### **Division 2.1              Orders and committal**

#### **4              Power to order periodic detention**

- (1) A court—
  - (a) which convicts a person of an offence against a law of the Territory; and
  - (b) which, but for the option of making an order under this section, would otherwise sentence the person to a term of imprisonment of not less than 3 months but not more than 24 months;may, instead of sentencing the person to imprisonment, by order—
  - (c) sentence the person to complete such number of detention periods at a detention centre, as the court specifies; and
  - (d) direct that the person be released from custody subject to any order that may be made under section 10 (2).
- (2) The number of detention periods that a person may be required to serve under an order shall be calculated at the rate of 1 detention period for each week of the term of imprisonment to which the person would otherwise have been sentenced.
- (3) An order for periodic detention remains in force until—
  - (a) the relevant detention periods required to be served under the order, or any detention periods by which the order has been extended under section 25, have been served; or
  - (b) the order has been cancelled.

## **5 Core conditions**

The following core conditions shall be included in an order for periodic detention:

- (a) that the offender report to an officer at the relevant detention centre on the date and at the time specified in the order;
- (b) that the offender notify an officer at the detention centre within 48 hours of being charged with an offence in the Territory or elsewhere, while the order is in force;
- (c) that the offender not commit an offence punishable by imprisonment, while the order is in force;
- (d) that the offender notify an officer at the detention centre of any change in his or her address, while the order is in force, within 48 hours after the change;
- (e) that, while the order is in force, the offender obey all lawful instructions and directions of the director or an officer.

## **6 Circumstances in which periodic detention order may be made**

- (1) A court shall not make an order under section 4 unless—
  - (a) the court is satisfied that it is appropriate for the offender to undertake such an order; and
  - (b) the court is satisfied that there are appropriate facilities available at the relevant detention centre for the offender to undertake such an order; and
  - (c) the offender submits himself or herself to a medical examination by a medical practitioner, if so required by the court; and
  - (d) the court has received a pre-sentence report in respect of the offender pursuant to the *Crimes Act 1900*, division 15.2; and

- (e) the court has explained to the offender—
    - (i) the effect the proposed order would have; and
    - (ii) the consequences of noncompliance with the order and the circumstances in which the offender would be taken to have breached the order; and
    - (iii) that the court has the power under this Act to review the order on the application of the director or the offender; and
  - (f) the court is satisfied that the offender consents to undertaking such an order.
- (2) For subsection (1) (a) and (b), the court may have regard to such matters as it considers appropriate, including—
- (a) the pre-sentence report referred to in subsection (1) (d); and
  - (b) where a person has submitted to a medical examination by a medical practitioner, as required by the court—the report of that medical practitioner in respect of that examination; and
  - (c) a report by an officer, as required by the court.

## **7      Detainee taken to be in lawful custody**

A detainee shall, for the *Crimes Act 1900*, part 7—

- (a) while undertaking periodic detention at a detention centre; or
- (b) while working or travelling outside a detention centre pursuant to an order under this Act;

be taken to be in lawful custody.

## **8      Identification of detainees**

- (1) Where a court orders that an offender serve a sentence of periodic detention, the director may, as soon as practicable after the court so orders—

- (a) take a photograph of the detainee's face; and
  - (b) take imprints of the fingers and palms of both hands of the detainee.
- (2) The failure of a detainee to comply with a reasonable request of the director for subsection (1) shall be taken to be a failure to serve his or her sentence in accordance with the relevant order for periodic detention.
- (3) A photograph or imprints taken under subsection (1) may only be used for the purpose of identifying the detainee during the continuation of the periodic detention order and the director shall destroy that photograph or imprints upon completion of that order.

## **9 Periodic detention—concurrent and cumulative sentences**

- (1) An order for periodic detention may require that a sentence be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, another sentence or other sentences required by the same or a different order to be served by way of periodic detention.
- (2) A court shall not make such an order unless, at all times, the sum of—
- (a) the number of detention periods remaining to be served concurrently under the order or orders; and
  - (b) the number of detention periods remaining to be served, otherwise than concurrently, under the order or orders;
- does not exceed 104.

## **10 Notice to detainee**

- (1) Where a periodic detention order has been made, an officer of the court shall forthwith serve, or cause to be served, on the detainee a copy of the order together with a notice specifying—

- (a) the date on which the detainee is first to report to the detention centre; and
  - (b) the day of the week on which the detainee is thereafter to report, during his or her sentence; and
  - (c) the time and the place at which the detainee is to report on that date and on each such day.
- (2) The court may order that a detainee who is in custody shall not be released until after he or she has been given a notice under subsection (1).

## **11      Service of documents**

The documents referred to in section 10 (1) may be served on or given to a person—

- (a) by delivering a copy of the document to the person; or
- (b) by leaving a copy of the document at the last-known place of residence or business of the person with a person apparently resident or employed at that place and apparently over the age of 16 years.

## **Division 2.2                      Performing periodic detention**

### **12      Meaning of *drug***

In this division:

*drug* means—

- (a) a substance specified in the *Road Transport (Alcohol and Drugs) Act 1977*, schedule 1; or
- (b) a substance that is specified in the *Drugs of Dependence Regulations 1993*, schedule 1 or 2.

### **13 Commencement of sentence**

A sentence of periodic detention commences on the date specified in the order of the court under section 4.

### **14 Service of sentence**

- (1) A detainee shall serve his or her sentence by way of periodic detention in accordance with this Act.
- (2) A detainee shall first report on the date and at the time and place specified in the notice to the detainee under section 10 (1) and thereafter during the term of the detainee's sentence on the day of the week specified in the notice as the day on which he or she is so to report and at the same time and place unless otherwise ordered under this Act by the director, and if so ordered, then in accordance with the order made by the director.
- (3) Subsection (2) ceases to apply in respect of a detainee if the order for periodic detention that was made in respect of the detainee is cancelled.
- (4) Where—
  - (a) a detainee is required, by or under this Act, to report at a detention centre; and
  - (b) the regulations prescribe the manner in which a detainee is to report;the detainee complies with the requirement only if he or she reports in the manner so prescribed.

### **15 Work etc**

- (1) The director may, by order, direct a detainee—
  - (a) to participate in any activity, attend any class or group or undergo any instruction that the director considers conducive to the detainee's welfare or training; or

- (b) to perform, between such hours as are specified in the order, any work in a detention centre specified in the order that the director considers suitable to the detainee's physical capacity; or
  - (c) to report to an officer specified in the order at a specified place other than a detention centre and to perform work that the director considers suitable to the detainee's physical capacity; during any detention period.
- (2) For subsection (1) (c), the director may direct a detainee to perform work at—
- (a) a hospital or a charitable or educational institution; or
  - (b) the home of an elderly person, an infirm person or a person with a disability; or
  - (c) an institution for the elderly, the infirm or persons with disabilities; or
  - (d) any place of which the Territory or a Territory authority is the owner or occupier or which is administered by the Territory or the Territory authority.
- (3) The director shall not direct a detainee to perform any work referred to in subsection (2) if, in performing the work, the detainee would take the place of any person who would otherwise be employed on that work as a regular employee.
- (4) Where the director makes an order under subsection (1) (c) and for any reason work is not available at the place specified in that order or it is impracticable for the detainee to perform work at that place, the detainee shall report at such other place nominated, and in accordance with such instructions as may be given to him or her, by an officer specified in the order.



## **16 Variation of days of attendance**

- (1) A detainee may make application in writing to the director requesting the director to make an order varying the day on which the detainee's detention period during the whole or part of the detainee's sentence is to commence.
- (2) Where a detainee makes application under subsection (1), the director may—
  - (a) grant the application and order that the day in respect of which the application is made be varied as requested in the application; or
  - (b) refuse to grant the application.

## **17 Variation of times of attendance**

- (1) A detainee may make application in writing to the director requesting the director to make an order varying—
  - (a) the time at which he or she is required to report at a detention centre or place of work during the whole or part of the detainee's sentence; and
  - (b) the time at which he or she may leave a detention centre or place of work during the whole or part of the detainee's sentence.
- (2) Subject to subsection (3), where a detainee makes application under subsection (1), the director may—
  - (a) grant the application and order that the times in respect of which the application is made be varied as requested in the application; or
  - (b) refuse to grant the application.
- (3) The director shall refuse to grant an application which has the effect of increasing or reducing the number of consecutive hours of periodic detention.

**18 Director to give notice**

Where the director makes an order under section 15, 16 or 17, he or she shall cause written notice of the order to be given to the detainee to whom the order relates.

**19 Commencement of certain orders**

An order under section 15, 16 or 17 takes effect on the day on which the order is made, or if the order provides for a later date of effect, as so provided.

**20 Effect of complying with certain orders**

For this Act, a detainee shall be taken to be complying with an order for periodic detention if he or she serves his or her sentence in accordance with an order of the director made under section 15, 16 or 17 in respect of the detainee and while the detainee complies with such an order that is inconsistent with a provision of an earlier order of the court or the director in respect of the detainee, the earlier order shall, to the extent of the inconsistency, cease to have force or effect.

**21 Complaints by detainees**

A detainee who is aggrieved—

- (a) by an order made by the director under section 15; or
- (b) by a decision of the director to refuse to grant an application under section 16 (2) (b) or 17 (2) (b);

may make a complaint to an official visitor in relation to the order or decision, as the case may be.

**22 Detainee unfit for detention**

- (1) The manager of a detention centre may refuse to admit a detainee to the centre where he or she believes on reasonable grounds that the detainee is unfit to serve a period of detention because the detainee's

behaviour is unruly or is otherwise a threat to the good order or security of the centre.

- (2) Where the results of a test undertaken by a detainee in pursuance of a requirement by the manager of a detention centre under section 23 (1) indicate to the manager that—
- (a) the concentration of alcohol in the blood of the detainee is equal to or more than 0.02g of alcohol per 100mL of blood or more; or
  - (b) a drug is present in the body of the detainee;
- the manager of the centre shall—
- (c) where the test results are received by the manager prior to admission of the detainee for a detention period—refuse to admit the detainee to the centre and inform the detainee that he or she is to be taken to have failed to report for that detention period; and
  - (d) where the test results are received by the manager while a detainee is serving a detention period—direct the detainee to leave the centre and inform the detainee that he or she is to be taken to have failed to report for that detention period; and
  - (e) where the test results are received by the manager after the completion of a detention period by the detainee—inform the detainee that he or she is to be taken to have failed to report for that detention period.
- (3) Subsection (2) does not apply in relation to a detainee where the concentration of alcohol in the detainee's blood or the presence of the drug in the detainee's body is due to the detainee taking medication in accordance with the advice of—
- (a) a medical practitioner, being advice provided for medical reasons; or
  - (b) a dentist, being advice provided for dental reasons; or

- (c) a nurse, being advice provided for nursing reasons.
- (4) Where—
- (a) under subsection (1) or (2) (c), a detainee has been refused admission to a detention centre; or
  - (b) under subsection (2) (d), a detainee has been directed to leave a detention centre; or
  - (c) test results of the kind referred to in subsection (2) (a) or (b) have been received by a manager after completion of a period of detention by a detainee;
- the detainee shall be taken to have failed to report for periodic detention.
- (5) Where a detainee refuses or fails to submit to a test that he or she is required to undertake under section 23 (1)—
- (a) prior to admission to a detention centre for a detention period; or
  - (b) while the detainee is serving a detention period;
- the manager of the centre shall—
- (c) in the circumstances referred to in paragraph (a)—refuse to admit the detainee to the centre and inform the detainee that he or she is to be taken to have failed to report for that detention period; and
  - (d) in the circumstances referred to in paragraph (b)—direct the detainee to leave the centre and inform the detainee that he or she is to be taken to have failed to report for that detention period.
- (6) A detainee who refuses or fails to submit to a test that he or she is required to undertake under section 23 (1) shall be taken to have failed to report for the relevant detention period.

### **23 Manager may require alcohol or drug testing**

- (1) The manager of a detention centre may require a detainee who is reporting for, or otherwise serving, a detention period to submit to such test as may be prescribed to determine—
  - (a) whether alcohol is present in the detainee's blood and, if so, the concentration of alcohol in the detainee's blood; or
  - (b) whether a drug is present in the detainee's body.
- (2) A test prescribed for the purposes of subsection (1) shall only be carried out by an officer authorised to do so under section 38.
- (3) The regulations may make provision for and in relation to—
  - (a) the procedures to be followed in relation to a test prescribed for the purposes of subsection (1); and
  - (b) an instrument required for the purposes of such a test; and
  - (c) the analysis of a sample or a specimen obtained from a person who has undergone such a test.
- (4) As soon as practicable after a prescribed test has been carried out, the officer who carried out the test shall give the detainee a written statement, signed by the officer, containing the particulars required by the regulations to be included in such statement.

### **24 Leave of absence**

- (1) The director may grant leave of absence from a detention period to any detainee for health reasons or on compassionate grounds or for such other reason as the director considers sufficient.
- (2) Leave of absence may be granted in the prescribed manner either before or after the detention period to which it relates.
- (3) The Magistrates Court may, on the application of a detainee whose request for leave of absence for 1 or more detention periods has

been refused, direct that leave of absence be granted in respect of all or any of those detention periods.

- (4) An application under subsection (3) shall be made within 21 days after the date on which the request to which it relates was refused.
- (5) Subject to any order of the court to the contrary, the making of an application does not stay the operation of section 25 with respect to any detention period to which the application relates.
- (6) Leave of absence shall be taken to have been granted for each detention period in respect of which a direction under this section is made.
- (7) A detainee who is granted leave of absence from a period of detention shall not be taken to be serving that period of detention for the purposes of his or her sentence.

## **25 Extension of detention**

- (1) Where a detainee fails to report as required for a detention period and has not been granted leave of absence in respect of that period, the detainee's sentence is extended by 1 detention period for each detention period for which the detainee has failed to report.
- (2) The term of a sentence may not be extended under subsection (1) by more than 2 detention periods.
- (3) Subsection (1) does not have effect until the detainee has been given written notice to the effect that—
  - (a) the detainee has failed to report, as required by or under this Act; and
  - (b) that subsection operates to extend the term of the detainee's sentence as a result of the failure to report; and
  - (c) the detainee may apply to the director for leave of absence under section 24 with respect to any 1 or more of the detention periods concerned.

## **26 Variation of sentence on compassionate grounds**

Where, on application by the director or a detainee, the court that made the order for periodic detention in respect of the detainee is satisfied that the detainee is unlikely to be able to serve the remainder of his or her sentence within a reasonable time having regard to—

- (a) the health of the detainee; or
- (b) any other compassionate grounds; or
- (c) the number of detention periods remaining to be served by the detainee; or
- (d) the length of time during which it appears that the detainee will be unable to serve periodic detention;

the court may vary the sentence by cancelling the remaining detention periods that were to be served by the detainee.

## **27 Directions**

- (1) The director or manager of a detention centre may, subject to any regulations made for this subsection, give directions (not inconsistent with this Act) to any detainee for the purpose of securing the enforcement or observance of this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations, rules and orders (see *Legislation Act 2001*, s 104).

- (2) Notwithstanding anything in subsection (1), the director or the manager of a detention centre may, subject to any regulations made for this subsection, give directions in an emergency or in any other prescribed circumstances to any detainee.

## **28A Service of periodic detention orders while in custody**

- (1) A detainee who is held in lawful custody (whether in a remand centre or elsewhere) for a whole detention period is taken to have served the detention period in accordance with this Act.

## **Division 2.3 Cancellation of orders**

### **29 Cancellation on subsequent conviction**

- (1) This section applies to a detainee who is convicted of an offence and sentenced on the conviction to a term of imprisonment.
- (2) If the term of imprisonment is for more than 1 month, the order for the person's periodic detention is cancelled on the day the sentence takes effect.
- (3) If the term of imprisonment is for 1 month or less, the sentencing court may cancel the order for the person's periodic detention.

### **30 Cancellation otherwise than on subsequent conviction**

- (1) Subject to this section, where an order for periodic detention is in force in respect of a detainee, the court that made the order may, on application by the detainee or the director, cancel the order if it appears to the court that there are good grounds for doing so.
- (2) Without limiting subsection (1), the court may, on the application of the director, cancel the order if satisfied that the person is not serving his or her sentence in accordance with the order.
- (3) Without limiting subsection (1), the court shall, on the application of the director, cancel the order if satisfied that—
  - (a) the person has, for 3 or more detention periods, whether consecutive or not, failed to report, as required by or under this Act; and
  - (b) the failures to report occurred otherwise than on leave of absence under section 24.



- (4) Before hearing an application to cancel an order under this section the court shall—
- (a) in the case of an application by the director—
    - (i) cause the detainee to be served with a summons for his or her appearance together with a copy of the application; or
    - (ii) where the court considers it necessary to secure the appearance of the detainee other than by way of summons—instead of issuing a summons, issue a warrant for the apprehension of the detainee; and
  - (b) in the case of an application by a detainee—cause the director to be served with a copy of the application.
- (5) Notwithstanding the issue of a summons under subsection (4) (a) (i), the court may issue a warrant at any time before or after the time mentioned in the summons for the appearance of the detainee.
- (6) The court may refuse to cancel the order under subsection (3) if satisfied that—
- (a) leave of absence should have been granted under section 24 with respect to 1 or more detention periods; and
  - (b) the total number of detention periods for which the person has failed to report as referred to in subsection (3) would, had the leave of absence been granted with respect to those detention periods, be less than 3;
- in which case it shall make a determination to that effect.
- (7) Where the court makes a determination under subsection (6), leave of absence under section 24 shall be taken to have been granted in accordance with the terms of the determination.

- (8) In proceedings on an application under this section, a certificate purporting to be signed by the director and certifying any of the following:
- (a) that a person is a detainee;
  - (b) particulars of a periodic detention order;
  - (c) particulars of any failure by a detainee to serve his or her sentence in accordance with the order;
- is evidence of the matters certified.
- (9) In proceedings on an application under this section, where a detainee is taken to have failed to report for periodic detention by virtue of the operation of section 22 (4) or (6), evidence of any matters relevant to—
- (a) a test that a detainee was required to undertake but which the detainee refused or failed to undertake, as required; or
  - (b) a test undertaken by a detainee; or
  - (c) the analysis of the results of a test undertaken by a detainee;
- may be provided by way of a certificate as provided for in accordance with the regulations.
- (10) A certificate referred to in subsections (8) and (9) shall not be admitted in evidence, unless the court is satisfied that reasonable efforts have been made to serve a copy of the relevant certificate on the detainee concerned.
- (11) The court shall not cancel an order under this section if satisfied that the grounds for cancellation of the order would constitute a sufficient reason for an order for variation of the sentence to be made under section 26, in which case the court shall vary the sentence by cancelling the remaining detention periods that were to be served by the detainee.

**31 Certain effects of cancellation of order for periodic detention**

- (1) Where an order for periodic detention is cancelled under section 29 or 30—
  - (a) any order that was made under section 15, 16 or 17 in respect of the detainee, ceases to have effect; and
  - (b) subject to section 32 (1), any remaining periods of detention to which the order applied shall be served as a separate term of imprisonment imposed at the time of the cancellation.
- (2) The term of imprisonment that a person is liable to serve for the purposes of this section shall be calculated at the rate of 1 week for each detention period that the person would otherwise have been required to serve under an order if it had not been cancelled.

**32 Conditional release**

- (1) Where, pursuant to section 31 (1) (b), a person is required to serve a term of imprisonment, the court may, by order, direct that the person be released forthwith or after serving a specified part of the term of imprisonment upon his or her giving security, with or without sureties, by recognisance or otherwise, to the satisfaction of the court that—
  - (a) he or she will be of good behaviour for such period as the court specifies in the order; and
  - (b) he or she will, during the period so specified, comply with such conditions (if any) as the court considers appropriate to specify in the order, which conditions may include—
    - (i) the condition that the person will, during the period so specified, be subject to the supervision on probation of a person, for the time being appointed in accordance with the order; and

- (ii) the condition that the person will obey all reasonable directions of a person so appointed.
- (2) A court shall not release a person under subsection (1) on condition that the person perform unpaid community work.

### **33 Application of Rehabilitation of Offenders (Interim) Act**

The *Rehabilitation of Offenders (Interim) Act 2001* applies in relation to a term of imprisonment required to be served by a person because of the cancellation of a periodic detention order under section 29 (Cancellation on subsequent conviction) or section 30 (Cancellation otherwise than on subsequent conviction) as if—

- (a) for section 31 (Court to set nonparole period) of that Act—the court had sentenced the person to the relevant term of imprisonment; or
- (b) for section 32 (Setting of nonparole period for person serving 1 or more previous sentences) of that Act—a reference in that section to the existing sentence or the new sentence included that term of imprisonment.

### **34 Application of Crimes Act**

- (1) The *Crimes Act 1900*, part 7 applies in relation to a person serving a term of imprisonment as a result of the cancellation of a periodic detention order under section 29 or 30.
- (2) An order under section 32 (1) is enforceable, as far as practicable, in the same way as an order under the *Crimes Act 1900*, section 403 (1) and for that purpose the *Crimes Act 1900*, sections 404, 405 and 406 apply in relation to such order, so far as the same are applicable, with the necessary changes.

## **Division 2.4                      Miscellaneous**

### **35      Offences**

- (1) A detainee who—
- (a) contravenes—
    - (i) an order or direction given by the director; or
    - (ii) a direction given by an officer; or
  - (b) contravenes standing orders concerning the good order, discipline and security of a detention centre; or
  - (c) makes, conceals or has in his or her possession, without authority, a tool, weapon, knife, key or other implement or thing capable of being used, to effect the escape of the person;
- commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) It is a defence to a prosecution for an offence against subsection (1) (a) if the detainee establishes that—
- (a) he or she has a reasonable excuse for the contravention; and
  - (b) he or she had made known that excuse to the person who gave the order or direction within a reasonable time.
- (3) It is a defence to a prosecution for an offence involving an order made under this Act if the detainee establishes that the terms of the order were not communicated to him or her in sufficient time to enable compliance with the order, but the terms of such an order shall be taken to have been communicated to a detainee upon whom a notice of the order was duly served.
- (4) It is a defence to a prosecution for an offence involving a direction given under this Act if the detainee establishes that—

- (a) the direction was not communicated to him or her in sufficient time to enable compliance with the direction; or
  - (b) the direction was inconsistent with another direction given to him or her under this Act and he or she was obeying that other direction.
- (5) It is a defence to the prosecution of a detainee for an offence against a provision of this Act concerning the good order, discipline and security of a detention centre if the detainee establishes that—
- (a) the detainee was obeying a direction or instruction given to the detainee under this Act; and
  - (b) the detainee could not comply with the provision at the same time that the detainee was obeying the direction or instruction.

*Note*        A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations, rules and orders (see *Legislation Act 2001*, s 104).

## **Part 3**                      **Corrective services administration**

### **Division 3.1**              **Officers**

#### **36**      **Director of corrective services**

- (1) There shall be a Director of Corrective Services.
- (2) The chief executive shall create and maintain an office in the public service the duties of which include performing the functions of director of corrective services.
- (3) The director shall be the public servant for the time being performing the functions of the appropriate public service office referred to in subsection (2).

#### **37**      **Officers**

- (1) There shall be—
  - (a) a manager of a detention centre who shall have responsibility for the administration of the centre; and
  - (b) 1 or more custodial officers who shall have responsibility for assisting the manager.
- (2) The chief executive shall create and maintain an office in the public service the duties of which include performing the functions of the office referred to in subsection (1) (a).
- (3) The manager of a detention centre shall be the public servant for the time being performing the functions of the public service office referred to in subsection (2).
- (4) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include performing the functions of an office referred to in subsection (1) (b).

- (5) A custodial officer shall be any public servant for the time being performing the functions of a public service office referred to in subsection (4).

### **38 Authorisation to conduct tests**

- (1) The director may, in writing, authorise an officer to carry out a test prescribed under section 23 (1) if the officer has—
- (a) undergone a course approved by the Minister as a course for the instruction of officers in the carrying out of the test; and
  - (b) completed the course to the satisfaction of the director.
- (2) An authorisation is a notifiable instrument.

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

### **39 Delegation by director**

The director may delegate in writing any of the director's powers under this Act to an officer.

### **40 Reports etc**

As required by the director, an officer shall prepare reports and returns and keep records and, as required, provide the director or a specified person or body with such reports, returns and records.

## **Division 3.2                      Management**

### **41 Definitions for div 3.2**

In this division:

*detainee* means a detainee who is serving a detention period.

*officer* means—

- (a) the manager of a detention centre; or
- (b) a custodial officer; or



- (c) a medical practitioner, dentist, nurse, health worker, teacher or public servant who is engaged to work at a detention centre.

## **42 Declaration of detention centres**

- (1) The Minister may, in writing, declare a place to be a detention centre.
- (2) A declaration is a notifiable instrument.

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

### **42A If detention centre also remand centre**

- (1) This section applies if a place declared to be a detention centre under section 42 is also an area declared to be a remand centre, or a temporary remand centre, under the *Remand Centres Act 1976*, part 2.
- (2) This Act—
- (a) applies in relation to the place only to the extent that it is used for this Act; and
- (b) applies only in relation to a person who is a detainee under this Act.
- (3) The director must ensure that the place is used to hold detainees under this Act only when a place that is not also a remand centre is not reasonably available to hold the detainees.

## **43 Manager's responsibilities**

- (1) Subject to this Act, the manager is responsible for—
- (a) the management, good order, discipline and security of a detention centre; and

(b) the welfare and conduct of detainees.

*Note*     A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations, rules and orders (see *Legislation Act 2001*, s 104).

- (2) A manager shall take reasonable steps to ensure that officers have access to information concerning their functions and the rights and obligations of detainees under this Act.
- (3) A manager shall give all necessary directions to ensure that officers act lawfully in performing their functions.

#### **44     Delegation by manager**

A manager may delegate in writing any of his or her powers under this Part to a custodial officer.

#### **45     Absence of manager**

Where the manager is not on duty at a detention centre and there is—

- (a) no delegation in force under section 44; or
- (b) no delegate of the manager on duty at the centre;

the functions of the manager shall be performed in accordance with the standing orders.

#### **46     Manager subject to director's directions**

The director may give directions to a manager in relation to the manner in which the manager discharges his or her responsibilities.

#### **47     Powers and duties of officers**

- (1) An officer—
  - (a) shall not jeopardise—

- (i) the good order, discipline and security of a detention centre; or
  - (ii) the welfare or discipline of detainees;
- (b) shall report immediately to the manager anything which might reasonably be thought to jeopardise such matters.
- (2) An officer (not being a person described in paragraph (c) of the definition of officer) may give such directions to a detainee as are necessary for—
  - (a) the management, good order, discipline or security of a detention centre; or
  - (b) the welfare or discipline of detainees.
- (3) An officer may give directions to a detainee concerning the manner in which the detainee is to comply with an order in force under this Act.
- (4) A direction under subsection (2) or (3) shall not unreasonably interfere with work being done by a detainee, education being undertaken by a detainee or the practice by a detainee of a religion.

#### **48 Entitlements of detainees**

A detainee is entitled—

- (a) to wear his or her own clothing; and
- (b) to receive necessary health services.

#### **49 Discipline**

- (1) Where a manager believes on reasonable grounds that it is necessary to do so—
  - (a) to maintain the good order, discipline or security of a detention centre; or
  - (b) for the welfare or discipline of a detainee;

he or she may—

- (c) arrange for the detainee to be confined to sleeping quarters; or
  - (d) direct the detainee to leave the centre, or other place at which the detainee has been directed to work, and inform the detainee that the detention period that was being served by the detainee is to be taken to be terminated and that the detainee's sentence is to be extended by a further detention period.
- (2) Where a detainee has been directed to leave a detention centre, or other place, under subsection (1) (d), the relevant detention period shall be taken to be terminated and the detainee's sentence is extended by a further detention period.

## **50 Clothing and body searches**

- (1) Subject to this section, where a manager believes on reasonable grounds that it is necessary to do so—
- (a) to maintain the good order, discipline or security of a detention centre; or
  - (b) for the welfare or discipline of a detainee;

he or she may carry out, or direct another officer to carry out, a search of a detainee, or of the clothing that is being worn by, or property in the apparent control of, the detainee.

- (2) A body search—
- (a) shall be conducted in a private area; and
  - (b) subject to subsection (3), shall be conducted, by a manager or custodial officer who is of the same sex as the detainee; and
  - (c) subject to subsection (4), shall not be conducted, in the presence or view of a person who is of the opposite sex to the detainee; and

- (d) shall not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
  - (e) shall not involve a search of a person's body cavities.
- (3) A body search may be conducted by a manager or custodial officer of the opposite sex to the detainee if a manager or custodial officer of the same sex as the detainee is not available within a reasonable time.
  - (4) A body search may be conducted in the presence of a medical practitioner or nurse of the opposite sex to the detainee if a medical practitioner or nurse of the same sex as the detainee is not available within a reasonable time.
  - (5) If a transgender or intersex person is searched, the person may ask that the search be carried out by either a male or a female.

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

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

- (6) If the transgender or intersex person asks that the search be carried out by a male, the person is taken, for this section, to be male.
- (7) If the transgender or intersex person asks that the search be carried out by a female, the person is taken, for this section, to be female.
- (8) If any of the detainee's garments are seized as a result of a body search, the detainee shall be provided with adequate clothing.
- (9) The regulations may make provision in relation to the conduct of searches carried out under subsection (1).
- (10) In this section:

*body search* means a search under subsection (1) that involves a detainee being required to remove—

- (a) all of his or her garments; or

- (b) some of his or her garments (not being an overcoat, a coat or jacket or any gloves, headwear or footwear);

for the purpose of an examination of any part of the detainee's body (but not of the detainee's body cavities) and of those garments.

## **51 Use of force**

- (1) A manager may use or direct the use of such force as is necessary and reasonable—
  - (a) to maintain good order, discipline and security of a detention centre; or
  - (b) for the welfare or discipline of detainees.
- (2) A custodial officer may use such force as is necessary and reasonable to compel a detainee to obey a lawful direction, if the officer believes on reasonable grounds that it is necessary to do so to prevent—
  - (a) the detainee or another person being killed or seriously injured; or
  - (b) serious damage to property.
- (3) If a custodial officer uses force to compel a detainee to obey a direction, he or she shall report the fact to the manager as soon as possible.
- (4) The manager shall report to the director as soon as possible—
  - (a) the use of force by the manager to compel a detainee to obey a direction; or
  - (b) the use of force reported to the manager by another officer.

## **52 Medical treatment**

- (1) A manager may arrange for a medical practitioner to examine a detainee subject to the detainee consenting to such examination.
- (2) Where a medical practitioner considers it necessary that a detainee be removed from a detention centre, or other place at which the detainee has been directed to work, to receive medical treatment in a hospital or from a medical practitioner, he or she shall notify the manager of the centre in writing of the fact and of the hospital to which, or the medical practitioner to whom, the detainee should, in the opinion of the firstmentioned medical practitioner, be removed.
- (3) Where—
  - (a) a manager is of the opinion that a detainee is in need of immediate medical treatment in a hospital; and
  - (b) no medical practitioner is available to give a notification under subsection (2);the manager shall cause the detainee to be removed to a hospital.
- (4) Where, during a detention period, a detainee is removed under this section for the purposes of receiving medical treatment, the whole or part of that detention period during which the detainee is away for that purpose shall be taken to be served by the detainee as part of that sentence.

## **53 Official visitors—duties**

- (1) An official visitor—
  - (a) shall, as far as practicable, visit each detention centre at least once each week; and
  - (b) may visit any other places at which detainees have been directed to work;in order to inspect the centre or such other places and to inquire into complaints from detainees.

- (2) Where, after inspecting a detention centre or any other place at which a detainee has been directed to work, an official visitor is not satisfied that the centre, or that place, is being conducted in accordance with the provisions of this Act, he or she shall report the matter to the Minister.

#### **54    Complaints by detainees**

- (1) Where a detainee is not satisfied with his or her treatment or the manner in which a detention centre, or other place at which he or she has been directed to work, is conducted—
- (a) the detainee; or
  - (b) a person acting on behalf of, and at the request of, the detainee;
- may make a complaint to an official visitor.
- (2) A complaint under subsection (1) or section 21 may, at the request of the detainee, be made in the absence of any person other than the complainant and the official visitor.
- (3) An official visitor shall inquire into a complaint made under subsection (1) or section 21 and may—
- (a) make a recommendation concerning the complaint to the director; and
  - (b) make such report (if any) to the Minister concerning the complaint as he or she considers necessary.

#### **55    Notification of complaints**

An officer shall take all steps necessary to ensure that the director or the official visitor, as the case requires, is informed as soon as practicable of a complaint of a detainee under section 21 or 54, as the case requires.



**56 Inspection of centres**

A judge, magistrate or a member of the Legislative Assembly nominated by the Assembly may, at any time, inspect a detention centre or other places at which detainees have been directed to work.

**57 Offences by persons other than detainees**

A person shall not—

- (a) enter, or remain in, a detention centre without lawful excuse; or
- (b) unlawfully convey an article into or out of a detention centre or to or from a detainee.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**58 Standing orders**

- (1) The director may, from time to time, in writing, issue such orders and instructions as are necessary for—
  - (a) the day-to-day administration, including the good order, discipline and security, of a detention centre; and
  - (b) the welfare and discipline of detainees.
- (2) The director shall—
  - (a) cause orders and instructions issued under subsection (1), other than those dealing with the security of a detention centre, to be available for inspection at a detention centre at all reasonable times; and
  - (b) cause all orders and instructions issued under subsection (1) to be available for inspection at any time by a person referred to in section 56.

## Part 4                      Miscellaneous

### 59      **Exercise of prerogative of mercy and operation of other laws not affected**

Nothing in this Act affects—

- (a) the exercise of the Crown prerogative of mercy; or
- (b) the operation of the *Crimes Act 1900*, section 433 or 434; or
- (c) the operation of any Act, or of any other law in force in the Territory, relating to the release of offenders.

### 60      **Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note*      Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to—

- (a) the powers and duties of officers; and
- (b) misconduct by detainees at detention centres or other places where detainees may be directed to perform work; and
- (c) the health, welfare and living conditions of detainees at detention centres or at other places where detainees may be directed to perform work; and
- (d) the good order, discipline and security of detention centres.

- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## 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.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	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

#### **Periodic Detention Act 1995 No 3**

notified 19 June 1995 (Gaz 1995 No S115)  
s 1, s 2 commenced 19 June 1995 (s 2 (1))  
remainder (ss 3-66) commenced 1 September 1995 (s 2 (2) and Gaz 1995 No S222)

as amended by

#### **Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

#### **Road Transport Legislation Amendment Act 1999 No 79 sch 3**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
sch 3 commenced 1 March 2000 (s 2 and see Gaz 2000 No S5)

#### **Periodic Detention Amendment Act 2000 No 18**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 278**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 278 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

#### **Rehabilitation of Offenders (Interim) Act 2001 No 82 sch 1 pt 1.5**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
sch 1 pt 1.5 commenced 24 September 2001 (s 2 and CN 2001 No 4)

#### **Workers Compensation (Acts of Terrorism) Amendment Act 2002 No 22 pt 1.3**

notified LR 28 June 2002  
s 1, s 2 commenced 28 June 2002 (LA s 75)  
pt 1.3 commenced 1 July 2002 (s 2)

**Justice and Community Safety Legislation Amendment Act 2002  
No 27 pt 10**

notified LR 9 September 2002  
s 1, s 2 commenced 9 September 2002 (LA s 75)  
pt 10 commenced 10 September 2002 (s 2 (1))

**Legislation (Gay, Lesbian and Transgender) Amendment Act 2003  
A2003-14 sch 1 pt 1.25**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
sch 1 pt 1.25 commenced 28 March 2003 (s 2)

## 4 Amendment history

**Commencement**

s 2 om R1 LRA

**Interpretation for Act**

s 3 def *standing orders* ins 2001 No 44 amdt 1.3110

**Orders and committal**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R2 LA

**Performing periodic detention**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R2 LA

**Meaning of *drug***

s 12 am 1999 No 79 sch 3

**Directions**

s 27 am 2001 No 44 amdt 1.3111

**Compensation**

s 28 om 2002 No 22 amdt 1.5

**Service of periodic detention orders while in custody**

s 28A ins 2000 No 18 s 4  
am 2001 No 44 amdt 1.3112  
(2)-(4) exp 1 January 2002 (s 28A (4))

**Cancellation of orders**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R2 LA

**Cancellation on subsequent conviction**

s 29 sub 2000 No 18 s 5

**Application of Rehabilitation of Offenders (Interim) Act**

s 33 sub 2001 No 82 amdt 1.14

## Endnotes

4 Amendment history

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### **Miscellaneous**

div 2.4 hdg (prev pt 2 div 4 hdg) renum R2 LA

### **Offences**

s 35 am 1998 No 54; 2001 No 44 amdt 1.3113

### **Officers**

div 3.1 hdg (prev pt 3 div 1 hdg) renum R2 LA

### **Authorisation to conduct tests**

s 38 sub 2001 No 44 amdt 1.3114

### **Management**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R2 LA

### **Declaration of detention centres**

s 42 sub 2001 No 44 amdt 1.3115

### **If detention centre also remand centre**

s 42A ins 2002 No 27 s 36

### **Manager's responsibilities**

s 43 am 2001 No 44 amdt 1.3116

### **Clothing and body searches**

s 50 am A2003-14 amdt 1.82; ss renum R6 LA (see A2003-14 amdt 1.83)

### **Regulation-making power**

s 60 sub 2001 No 44 amdt 1.3117

### **Amendment of other laws**

pt 5 hdg om R1 LRA

### **Coroners Act 1956**

pt 5 div 1 hdg om R1 LRA

### **Principal Act**

s 61 om R1 LRA

### **Interpretation**

s 62 om R1 LRA

### **Crimes Act 1900**

pt 5 div 2 hdg om R1 LRA

### **Principal Act**

s 63 om R1 LRA

### **Insertion**

s 64 om R1 LRA

### **Remand Centres Act 1976**

pt 5 div 3 hdg om R1 LRA

**Principal Act**  
s 65 om R1 LRA

**Official Visitors—appointment and remuneration**  
s 66 om R1 LRA

## 5 Earlier republications

Some earlier republications 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 republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 2000 No 18	31 October 2000
2	Act 2001 No 82	22 November 2001
3	Act 2001 No 82	10 January 2002
4	Act 2002 No 22	1 July 2002
5	Act 2002 No 27	10 September 2002

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